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A GUIDE TO PRACTICE

BEING

A COMPLETE SERIES

OF

QUESTIONS AND ANSWERS

ON

The Consolidated Rules of Practice

AND AMENDMENTS THERETO TO

APRIL 15th, 1895

BY

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PREFACE.

I place before the Legal profession this little book, with the earnest wish that it will deserve the time that may be spent in reading it. I have carefully gathered together the questions, and tried to make them correct and short as far as possible. The number of the rule containing the answer is placed opposite to the question, so that any one not understanding the answer may quickly solve the difficulty. I have included the proposed Law Courts Act of 1895, as it has passed its second reading, and its seems to be the opinion that it will become law without further amendment.

G. F. T. ARNOLDI.

Toronto, April 15, 1895.

A GUIDE TO PRACTICE

CHAPTER I.

1. REFEREES.

Q. (34) Where may a Referee hold a trial or reference?

A. A Referee may hold a trial or reference at, or adjourn it to, any place which he may deem most convenient.

Q. (34) When may a Referee have an inspection or view?

A. He may have an inspection or view either by himself or with his assessors, if any.

Q. (34) What is the rule as to how a reference shall be proceeded with?

A. The Referee shall proceed with the reference from day to day, unless otherwise directed by the Court or a Judge.

Q. (36) What is the rule as to practice and procedure before Referees ?

A. The practice or procedure shall be the same as in the Master's office, except in the case of a trial of an issue, when it shall be as nearly as possible similar to the practice and procedure at a trial.

Q. (37-8) What are the powers of a Referee ?

A. (*a*) Subject to any order made by the Court or a Judge, the Referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court.

(*b*) The Referee is not authorized to commit any person to prison or to enforce an order by attachment or otherwise.

Q. (39) How and when may a Referee obtain the opinion of the Court on any question arising before him ?

A. The Referee may before the conclusion of any trial before him, or by his report, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom.

Q. (40, 1288) What power has the Court if dissatisfied with the Referee's report ?

A. The Court has power to require any explanations or reasons from the Referee, and to remit the cause

or matter, or any part thereof, for re-trial or for further consideration, or the Court may decide the question referred to the Referee on the evidence taken before him, either with or without additional evidence, as the Court may direct.

Q. (1288) Who may file a Referee's report, and what is the effect ?

A. The report of a Referee may be filed by any party forthwith after the same shall have been made, and shall have the effect of, and be subject to, all the incidents of a report of the Master as regards confirmation, appealing therefrom, motions thereupon, and otherwise.

2. MASTER'S OFFICE.

Q. (45) Within what time must an order of reference be taken to the Master's office, and what is the penalty for non-compliance ?

A. Within fourteen days after the same is or should have been drawn up, otherwise any other party to the cause may assume the carriage of the order.

Q. (46-47) What is the mode of adding parties in the Master's office?

A. The Master may direct an office copy of the judgment or order to be served upon such parties as it appears to him should be made parties to the action, such copy or order to be endorsed with a notice to the person so served, requiring such person to move against the judgment or order within fourteen days if he objects thereto.

Q. (48) What step may be taken by a party who is dissatisfied with an order making him a party in the Master's office?

A. The dissatisfied party may move within fourteen days from the date of service on him to set aside, add to, or vary the order.

Q. (54) On the bringing in of an order into the Master's office, what is the first step taken before the Master?

A. The Master issues a warrant fixing a time for the purpose of taking into consideration the matters referred to him by the judgment or order, and directs, if he thinks it necessary, the same to be served upon the parties or their solicitors.

Q. (55) What is the practice and procedure on the return of a warrant?

A. The Master is to fix a time at which to proceed to the hearing, and is to regulate, in all respects, the manner of proceeding with the reference, and to give any special directions as to the persons who are to attend, the time at or within which each proceeding is to be taken, the mode in which any accounts referred to him are to be taken or vouched, the evidence to be adduced in support thereof, and the manner in which each of the enquiries is to be prosecuted.

Q. (57) Under an order of reference, what power has the Master?

A. The Master has power to take accounts with rests or otherwise ; to take accounts of rents and profits received or which should have been received ; to set occupation rent ; to take into consideration necessary repairs, lasting improvements, and costs, and other expenses properly incurred ; to make all just allowances, to report special circumstances, and generally to inquire, adjudge, and report as to all matters relating thereto as fully as if the same had been specially referred.

Q. (62) In what cases does the Master settle the conveyances ?

A. In every case where the order directs the delivery of deeds or execution of conveyances, the Master is to give directions as to the delivery of such deeds, and settle the conveyances where the parties differ, and to give directions as to the parties to the conveyances and as to the execution thereof.

Q. (64) What power has the Master as to directing the reception of books of account as evidence ?

A. The Master has power to receive books as (*prima facie*) evidence, with liberty to any interested party to take such objection thereto as they may be advised.

Q. (68-69) In a suit in the Master's office where accounts are directed to be brought in, how may the Master provide for simplifying the issue between the parties ?

A. The Master may appoint a day to find out what is admitted and what is contested by the parties, or he may endorse on the warrant a notice that (rule 69) "the party is to admit the accounts, or such parts thereof as he can properly admit."

Q. (73) What is the general rule laid down for the Master in the conduct of a reference?

A. To devise the simplest, speediest, and cheapest mode of prosecuting the reference, and to dispense with unnecessary proceedings.

Q. (77) On the closing of a hearing before the Master, what provision is made as to procedure?

A. On closing the hearing, the Master is to so inform the parties to the reference then in attendance and make a note to that effect in his book, and after such entry no further evidence is to be received or proceedings had without the special permission of the Master; and the Master may proceed to prepare his report or certificate without further warrant except the warrant to settle, which is to be served on such parties as the Master directs.

Q. (78) What is the rule as to raising disputed matters before the Master?

A. Parties are to raise before the Master all points which may afterwards be raised upon appeal.

Q. (81-83) To whom is a Master's report issued, and who may file same?

A. The report is to be issued to the party prosecuting the reference, or, if he declines to take it out, to any party applying for same, and any one affected by the report may file same.

Q. (89) What are the powers of a Master where a sale is ordered?

A. The Master may cause the property or a competent part thereof to be sold either by public auction, private contract, or tender, or part by one mode and part by another, as he may think best in the interest of all parties.

Q. (90) If there is a sale under the trusts of a will or settlement, who gets the conduct of the sale?

A. The trustees of such will or settlement, unless the Court or Judge otherwise direct.

Q. (91-95) State the proceedings where a sale is ordered?

A. An appointment or warrant in respect of the sale is to be obtained from the Judge or Master and to be served upon all necessary parties, and at the time appointed thereby the party having the conduct of the sale is to bring into Chambers or the Master's office a draft advertisement, which is to contain the following particulars: The short style of cause; that the sale is in pursuance of the judg-

ment or order of the Court; the time and place of sale; a short and true description of the property to be sold; the manner in which the property is to be sold, whether in one lot or in several; what proportion of the purchase money is to be paid down by way of deposit, and at what time and in what way the residue of such money is to be paid, whether with or without interest, and any pa ticulars in which the proposed conditions of sale differ from the standing conditions (rule 96): the Master is then to settle the advertisement, to fix the time and place of sale, to name the auctioneer (where one is to be employed), and to make every other necessary arrangement for the sale.

Q. (98) Who may bid at sale?

A. All parties may bid except the parties having the conduct of the sale, the trustees, agents, or any persons in a fiduciary situation.

Q. (100) If no auctioneer is emp[illegible]d, who conducts the sale?

A. The Master or his clerk.

Q. (105) How is a sale objected to?

A. By motion to the Court or a Judge to set aside the same, and notice of the motion must be served upon the purchaser and other parties to the cause.

Q. (106) What is a purchaser's remedy where possession is wrongfully withheld from him?

A. After confirmation of the sale, the purchaser, on notice to the person conducting the sale, may pay the money into Court and proceed for an order for delivery of possession.

Q. (108) Within what time must a purchaser at a sale by the Court object to the abstract?

A. Within seven days.

Q. (108) Within what time must the vendor answer objections?

A. Within fourteen days.

Q. (109) What powers has the Master as to objections?

A. When the parties cannot agree, on the application of either party, the Master may issue a warrant to consider the abstract, and determine all questions, and he may require the vendor to perfect the abstract, and, on his neglect or refusal to do so, may permit the purchaser to remedy defects therein at the vendor's expense.

Q. (110) What are the duties of the Master as to the abstract and objections thereto?

A. The Master is not to make a report, but is to mark the objections as allowed or disallowed, and when he finds the abstract perfect, or as perfect as the vendor can make it, he is to so certify at the foot or on the back of same,

and such finding is to be final without filing unless appealed from.

Q. (112) What are the duties of vendors as to objections ?

A. The vendor is to afford the purchaser all the means of verification in his power, and, having done so, he may serve a notice on the purchaser requiring him to make objections or requisitions, if any, within seven days.

Q. (116) Where an order is obtained for a receiver, what is the first step ?

A. To obtain an appointment or warrant from the Master, and to serve the same on all necessary parties, naming in the copy served the proposed receiver and his sureties.

Q. (118) How is a receiver appointed where there are rival nominees ?

A. A party desirous of proposing another party as receiver is to serve notice of his intention so to do upon the other parties, naming the person proposed by him as receiver, and he is to bring the bond or recognizance proposed by him as security into the Master's office, and the Master is to appoint the one best fitted in his opinion to hold the position.

Q. (121) Within what time must a person appointed receiver be moved against ?

A. Within seven days.

Q. (124) In a suit for foreclosure, sale, or redemption, what is the duty of the Master as to incumbrancers?

A. The Master is to inquire and state whether any person or persons, and who other than the plaintiff, has or have a lien, charge, or incumbrance upon the land or premises.

Q. (127) Within what time must parties added by the Master move against his ruling?

A. Within fourteen days from the date of service.

Q. (129) What is the effect of the non-attendance of an incumbrancer on Master's appointment?

A. The Master is to treat such non-attendance as a disclaimer by the party so making default, and the claim of such party is to be thereby foreclosed.

Q. (138, 1291) What are the powers of Local Masters?

A. The Local Master is to have the same powers as the Master in Chambers at Toronto, except as to proceedings in the nature of a *quo warranto* under the Municipal Act, or the payment of money out of Court, or dispensing with the payment into Court, or to appeals from the taxing officers at Toronto pending taxation, or to making an order for the sale of infants' estates.

3. ACCOUNTANT'S OFFICE.

Q. (179) How is or are money, stock, or securities in Court to be transferred to a married woman?

A. When it does not in the whole exceed $600, it may be transferred by the Accountant upon the affidavit of the woman and her husband and their solicitor that the money is not subject to the trusts of the marriage settlement or agreement for a settlement, if any.

Q. (180) What provision is there where money is directed to be paid out to legal personal representatives and one of them dies before payment?

A. The money may, upon proof to the satisfaction of the officers signing and countersigning the cheque of such death, whether before, on, or after the day of the date of the order for payment, be paid to the survivors or survivor of them.

Q. (181) What provision is there for payment to the legal personal representatives of a person to whom money is directed to be paid, who dies before payment?

A. The money may be paid over upon proof to the satisfaction of the officers signing and countersigning the cheque of the death of such person, whether before, on, or after the date of the order or judgment, and that his legal personal representatives are entitled thereto.

Q. (182) What limit of time as to the interval between the accrual of a claim and payment out to the personal representative?

A. Six years from the date of the order.

Q. (192) What is a stop order, and what liability does it entail on the person obtaining it?

A. A stop order is an order made to prevent the transfer in or payment of stock, debentures, securities, or moneys, or any part thereof out of Court, and it entails a liability on the person obtaining it of having to pay any costs, charges, or expenses which shall be occasioned to any party to the action or matter, or any person interested in such stock, etc.

CHAPTER II.

COMMENCEMENT OF ACTIONS.

(*a*) Writ of Summons.

Q. (224) What matters are required to be commenced by writ, and what must a writ contain?

A. All actions which were formerly commenced by any form of writ or by bill or information shall be commenced by the issue of a writ of summons; such writ shall contain the name of the division from which it is issued, the names of the parties and the characters in which they sue and are sued, the office in which and the time within which the defendant is to enter his appearance, and it shall also be endorsed with a short statement of the nature of the plaintiff's claim.

Q. (964) Name any procedure commenced without a writ?

A. Petitions.

Q. (233, 276, 1307, 1311) Within what time must the writ call upon the defendant to appear?

A. Within ten days from the date of service.

Q. (236) What are concurrent writs, and how long do they remain in force?

A. Concurrent writs are writs which bear test of the same day as the original writ, and which remain in force so long as the original writ is in force.

Q. (232) If the defendant is not a British subject and is not in British dominion, what is substituted for a writ?

A. Notice of the writ of summons.

Q. (238) How long is a writ of summons in force?

A. For twelve months from the day of the date thereof.

(*b*) Renewal of Writ.

Q. (238) A writ is issued against A, B, and C. A and B are served within twelve months, C is not. What steps may the plaintiff take to preserve his rights against C?

A. He may before the expiration of the twelve months apply to the Court for leave to serve the writ after and notwithstanding the lapse of the twelve months.

Q. (238) What effect has the renewal of a writ upon the Statute of Limitations?

A. Has the effect of preventing the operation of the statute.

Q. (238) How do you prove that a writ has been renewed?

A. By the production of the original writ marked with the date of the day, month, and year of such renewal by the proper officer.

Q. (238) May a writ be renewed more than once?

A. Yes, it may be renewed more than once.

Q. (240) A plaintiff sues by a solicitor, what endorsement is required?

A. The writ must be endorsed with the solicitor's name or firm and place of business where proceedings and written communications may be left for him.

Q. (241) A plaintiff sues without a solicitor, what endorsement is required?

A. Where the plaintiff sues without a solicitor, the writ shall be endorsed with his place of residence and occupation; and, if such place of residence be more than two miles from the office where the appearance is to be entered, the plaintiff shall then name some place within two miles of said office where papers may be left for him. If this is not done, he may be served by posting up any papers requiring service in the said office.

(*c*) Endorsement of Claim.

Q. (244, 245) What difference is there between the general endorsement of a writ and a special endorsement?

A. In cases of special endorsement, the plaintiff need not deliver further particulars unless ordered to do so by the Court or a Judge, while in the case of a general endorsement he must, if required to do so by the defendant.

Q. (245) In what cases is a special endorsement allowed?

A. In all actions where the plaintiff seeks to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, bond, statute, guaranty, or trust, and in actions for the recovery of land or mesne profits.

Q. (705) What advantage is there in a special endorsement?

A. In case of non-appearance the plaintiff may sign final judgment for the amount endorsed on the writ, together with interest to the date of the judgment, and a sum for costs, and he may forthwith issue execution upon such judgment.

Q. (246) What endorsement is required upon a writ specially endorsed?

A. The endorsement, besides stating the nature of the claim, shall state the amount of the claim for debt and costs, and shall give notice that, upon payment within eight days after service, further proceedings will be stayed.

Q. (247) In an action for an ordinary account, what endorsement is required?

A. The writ of summons must be endorsed with a claim that such account be taken.

Q. (248) In a sale or foreclosure action, if immediate possession is required, what endorsement?

A. It must be endorsed with a claim for delivery of immediate possession.

Q. (249) In an action for dower claiming damages, what particulars are required?

A. In addition to the claim for dower, the plaintiff must claim damages for the detention of her dower from some day to be stated in the endorsement.

2. DISCLOSURES BY SOLICITOR AND PLAINTIFFS.

Q. (250) If a defendant served desires to know whether the writ has been issued with the privity of the alleged plaintiff's solicitor, what steps may he take?

A. He may demand in writing from every solicitor whose name is signed or endorsed on the writ of summons a declaration forthwith in writing, stating whether the writ was issued by him, or with his authority or privity.

Q. (251) If a writ is sued out in the name of a firm, what information must be given by the plaintiffs on demand?

A. The plaintiffs or their solicitors shall forthwith in writing declare the names and places of residence of all the persons constituting the firm.

3. SERVICE OF WRIT OF SUMMONS.

(*a*) Mode of Service.

Q. (252) What is the effect of the acceptance of service by a solicitor?

A. Personal service of a writ of summons or other documents is not necessary if the solicitor undertakes to appear to same.

Q. (253) What requisite is there for service where there is no acceptance by a solicitor?

A. Personal service is necessary, unless the Court or Judge deem it advisable to make an order for substitutional or other service.

Q. (253) What modes of service are allowed, if personal service cannot be effected?

A. The parties may be served by service on some other person, or by notice by advertisement or otherwise, as may seem just to the Court or a Judge.

Q. (254) After what time may a party demand from the sheriff a writ handed to him for service and not served?

A. After the expiration of ten days.

Q. (255) If not obtained from the sheriff on demand, what right has the plaintiff?

A. The plaintiff may issue a duplicate or concurrent writ and recover the costs of the writ not returned from the sheriff.

Q. (256) What duty as to endorsement on writ of time of service, and what penalty for not so doing?

A. The person serving a writ of summons must endorse on the writ, within three days after service, the day of the month and week of the service thereof; otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default without the leave of a Judge, such leave to be obtained at the cost of the plaintiff.

Q. (256) What special particulars are required in an affidavit of service of a writ of summons?

A. The affidavit of service shall mention the day on which the writ of summons was endorsed, with the date of service.

(*b*) SERVICE ON MARRIED WOMEN, INFANTS, OR LUNATICS.

Q. (257) How is service of a writ of summons effected on a married woman?

A. She may be served as if she were not under any disability, in the same way as if she were a *femme sole.*

Q. (258) How is service of a writ effected upon an infant?

A. By service on the official guardian.

Q. (258) What is required of the official guardian when he has been served with a writ?

A. He shall communicate with the proper parties, including the father or guardian of the infant, also the person with whom or under whose care the infant resides, and make such inquiries and take such proceedings as the interests of the infant may require.

Q. (259) In what case must service be made on an infant defendant personally?

A. In actions brought for the recovery of lands, goods, or chattels, of which he is personally in possession.

Q. (260) In what cases may an infant be served as an adult?

A. In actions brought in respect of a personal tort, or for the mere recovery of money.

Q. (261) In cases in which the official guardian does not represent the infant, how is the infant to be represented?

A. The infant may be represented by a guardian appointed by the Court.

Q. (263) What is deemed good service on a lunatic ?

A. Service on the lunatic's committee, or on the person with whom the lunatic resides, or under whose care he or she is, shall be deemed good service on such defendant, unless the Court or a Judge otherwise orders.

(*c*) SERVICE ON PARTNERS AND CORPORATIONS.

Q. (265) What is deemed good service in the case of a partnership ?

A. Service may be made either upon any one or more of the partners, or upon any person having at the time of service the control or management of the partnership business.

Q. (266) What is deemed good service on a person carrying on a business apparently consisting of more than one partner ?

A. Service may be made upon any person having at the time of service the control or management of the business.

Q. (267) How is service on a corporation effected ?

A. Service may be effected by serving the mayor, warden, reeve, president, or other head officer, or on the township, town, city, or county clerk, or on the cashier, treasurer or secretary, clerk or agent, of such corporation, or of any branch or agency thereof in Ontario.

Q. (268) How is service on railway, telegraph, or express companies effected?

A. May be effected by serving the agent of such corporation at any branch or agency thereof, or on any station master of any railway company, or on any telegraph operator or express agent having charge of any telegraph or express office belonging to such corporation.

Q. (270) A judgment is obtained in Quebec against a corporation, and an action is brought thereon in Ontario, how is service effected?

A. Service may be effected by serving the officer or officers named in the Act incorporating such corporation, and, if no such officer is named, then service may be effected according to the law of the Province of Quebec, and shall be held to be personal service.

(*d*) SERVICE OUT OF THE JURISDICTION.

Q. (271, 1310) In what cases is service out of the jurisdiction allowed?

A. In cases where the subject-matter of the action is within Ontario, or is contained in any Act, deed, will, contract, obligation, or liability affecting lands situate within Ontario, or where relief is sought against any person domiciled within Ontario, or the action is for the administration of the personal estate of any deceased person who, at the time of his death, was domiciled within the jurisdiction, or is for the execution of the trusts of any written instrument of which the person to be served is a trustee, and which

ought to be executed according to the law of Ontario, or where the action is founded upon any breach or alleged breach, within Ontario, of any contract which ought to be performed in Ontario, or for an injunction as to anything to be done within Ontario, or where any nuisance within Ontario is sought to be prevented or removed, or where any person out of the jurisdiction is a necessary or proper party to an action properly brought against any other person duly served within the jurisdiction.

Q. (271) Will service out of the jurisdiction of the writ of summons be allowed in the following cases:

1st. Where the whole subject-matter of the action is land situate within the jurisdiction?

A. Yes.

2nd. Where the action is founded on any tort committed within the jurisdiction?

A. Yes.

3rd. Where the action is founded on the alleged breach in the United States of a contract made in England?

A. No.

Q. (272) How is a notice in lieu of a writ of summons to be served?

A. In the same way as writs are served.

Q. (274) In case of service out of the province, how far is leave necessary?

A. Leave is not necessary. The Court or a Judge shall allow the service in case proof is given to the satisfaction of the Court that the service was duly made, and that the case is a proper one for service out of the Province.

4. APPEARANCE.

(*a*) GENERALLY.

Q. (1310) Within what time must an appearance be entered?

A. Within ten days, if served in Ontario, and not in the Algoma, Rainy River, or Thunder Bay Districts.

Q. (277) How is an appearance entered, and what must memo. of appearance contain?

A. The appearance is entered by the defendant delivering a memorandum in writing dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person, to the proper officer in the office in the same county from which the writ of summons was issued, and in which the memorandum subscribed on the writ requires the appearance to be entered.

Q. (279) What rule is there as to the office in which all proceedings subsequent to appearance are to be taken?

A. Subsequent proceedings shall be carried on in the office in which the appearance is entered.

Q. (281) If a defendant appears after the time limited for appearance, what must he do under penalty for non-compliance?

A. He must give notice of entry of appearance to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, on the same day on which he enters the appearance.

Q. (286) In what case must a copy of the memo. of appearance be served?

A. In case the defendant does not require a statement of claim, he shall so state in his memo. of appearance, and in that case shall serve a copy of such appearance on the plaintiff.

Q (288) What is the rule as to appearance by partners?

A. Partners sued in the name of their firm shall appear individually in their own names.

Q. (289) What is the rule as to appearance by a firm which, in reality, consists of only one person?

A. Such person constituting the firm shall appear in his own name.

(*b*) DOWER.

Q. (290) What may the defendant do on appearance in an action for dower?

A. The defendant may, within the time appointed, file an appearance and acknowledgment that he is tenant of the freehold, together with his consent that the plaintiff may have judgment for her dower therein, and may take the proceedings authorized by The Dower Act to have the same assigned to her, and he shall forthwith serve the plaintiff or her solicitor with a copy of such appearance, together with an affidavit of the day of the entering and filing the same in the proper office.

Q. (290) When may a doweress claim damages for the detention of her dower, as well as take proceedings for the assignment of dower?

A. May do so at any time.

Q. (292) A landlord hears that an action for dower has been brought against his tenant, how may he get himself into the action?

A. The landlord may, without leave, appear and defend, by filing with his appearance an affidavit that he is tenant of the freehold, and believes that there is good ground for disputing the plaintiff's claim to dower.

(*c*) RECOVERY OF LAND.

Q. (293) What steps may be taken in an action for the recovery of land by an owner not named as a defendant who is desirous of defending?

A. The owner may enter an appearance by filing with same an affidavit that he is in possession of the land, either by himself or his tenant, and stating further, in case the possession is by his tenant, that the defendant named in the writ is his tenant.

Q. (295) Where a person seeks to defend as landlord, what must he state in his appearance?

A. He shall state in his appearance that he appears as landlord.

Q. (296) Where a person not named as a defendant in a writ of summons enters an appearance as landlord, how shall the appearance be entitled, and what must the person entering the same do?

A. The appearance shall be entitled in the action against the party or parties named as defendant or defendants, and he shall forthwith give notice thereof to the plaintiff's solicitor, or to the plaintiff if he sues in person.

Q. (297) How may an appearance be limited in an action for the recovery of land?

A. The person appearing is at liberty to limit his defence to a part only of the property mentioned in the writ, by describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the cause and signed by him or his solicitor. Such notice to be served within four days after appearance.

(*d*) Limited Defence.

Q. (299) How may a defence be limited to a question of amount only?

A. Any person may limit his defence to the question of amount, and in that case he shall state in his appearance, or in a notice served within four days thereafter, that he disputes only the amount claimed by the plaintiff.

5. PARTIES.

(*a*) Generally.

Q. (300) What is the general rule as to joinder of parties as plaintiffs?

A. All persons may join as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative.

Q. (301) What is the general rule as to the joinder of parties as defendants?

A. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative.

Q. (303) A, B, and C make a joint promissory note to D. D sues A and B only; they contend that C should also be joined as a defendant. Are they right, and why?

A No; the plaintiff is not necessarily bound to sue all his sureties.

Q. (305) A mortgages to B, and then to C. C wishes to sell subject to B's mortgage. Must he make B a party to his action? If not, when can he do so?

A. No. He can only make B a party under special circumstances, to be alleged in the statement of claim.

Q. (308) Injury is done to goods carried by two railway companies, and the plaintiff does not know on which line the goods were injured. Which company may he properly sue?

A. The plaintiff may make both companies defendants in his action.

Q. (309) How far do proceedings against a trustee affect the interest of the *cestui que trust?*

A. Such proceedings will affect a ***cestui que trust*** in the same way as if he were a party to the action.

Q. (310) In the course of proceeding it is ascertained that an estate has no personal representative, what steps may the Court properly take?

A. The Court may either go on in the absence of any person representing the estate, or may appoint some person to represent the estate for all the purposes of the action.

Q. (311) What is an administrator *ad litem*, and how appointed?

A. Where it is necessary to represent an estate which has no administrator, the Court may appoint an administrator or an administrator *ad litem* to the estate, according as the case may require, to look after the interests of the estate.

Q. (312) How can you obtain redress against an executor "*de son tort*"?

A. On the application of any one interested in the estate of the deceased, the executor *de son tort* may be required to account for any assets of the estate which have come into his hands without the appointment of any other personal representative, and a receiver may be appointed, or the estate may be administered under the direction of the Court, without any other person than the receiver to represent the estate.

Q. (312) A receiver is appointed by the Court, and there is no personal representative

of the estate, what course may the Court adopt as to the settlement of the estate?

A. The Court may administer the estate without the appointment of any person other than the receiver to represent the estate.

Q. (313) How may an infant sue or defend an action?

A. An infant may sue as plaintiff by his next friend, and may defend any action by his guardian appointed for that purpose, or by the official guardian.

Q. (314) How may a married woman sue?

A. A married woman may sue for alimony without a next best friend, and in all cases not provided for by the Married Woman's Property Act she may sue as plaintiff by her next friend.

Q. A person sues on behalf of himself and all others of the same class. After action is brought, it is found that he himself is disentitled, although the class is not. Is he entitled to continue the action?

A. No; though the others are entitled, he cannot maintain the action on their behalf: Dillon *v.* Raleigh, A.R. 53.

Q. (317) A firm is composed of A, B, C, and D. A and B sue in the firm name. Ob-

jection is taken that C and D should join also. Is it a proper objection?

A. It is not a proper objection.

Q. (317) What is required in the case of a partnership which has been dissolved to the knowledge of the plaintiff before action is brought?

A. The writ of summons must be served upon every person sought to be made liable.

Q. (318) A carries on business as B & Co. How may he be sued? How must his appearance be entered?

A. He may be sued in the firm name, but his appearance must be entered in his own name.

Q. (320) Name the cases in which one of a class may sue without joining the others?

A. 1. A residuary legatee, or next of kin, may have judgment for the administration of the personal estate of a deceased person.

2. A legatee interested in a legacy charged upon real estate, or a person interested in the proceeds of real estate directed to be sold, may have judgment for the administration of the estate of the deceased person.

3. A residuary devisee or heir may have the like judgment.

4. One of several *cestuis que trustent*, under a deed or instrument, may have judgment for the execution of the trusts of the deed or instrument.

5. In all cases of actions for the protection of property pending litigation, and in all cases in the nature of waste, one person may move on behalf of himself, and of all persons having the same interest.

6. An executor, administrator, or trustee may obtain a judgment against any one legatee, next of kin, or *cestui que trust*, for the administration of the estate or the execution of the trusts.

7. An assignee of a chose in action may institute an action in respect thereof without making the assignor a party thereto.

Q. (322) What proceeding is required to notify the remaining parties of the class affected by the proceedings of what has been done?

A. The persons who, but for rule 320, would have been necessary parties to the action are to be served with an office copy of the judgment, endorsed with a notice that if the person served wishes to apply to set aside, add to, or vary the judgment or order, he must do so within fourteen days from the date of service.

Q. (323) What may the Court do where the defendant at the trial objects that the action is defective for want of parties?

A The Court, if it thinks fit, may pronounce a judgment saving the rights of the absent parties.

Q. (324) What is meant by misjoinder of parties, and what is the effect thereof? What power has the Court as to?

A. The misjoinder of parties is the improper bringing of an action in the name of or against some person who is either not entitled to bring the action, or against whom the plaintiff is not entitled to any relief. It has no effect on the action, the Court having the power to deal with the matter in controversy so far as it affects the rights and interests of the parties actually before it.

Q. (324) At what stage of the action should objection be taken of want of parties? What power has the Court?

A. At any stage. The Court or Judge may, at any stage of the proceedings, upon the application of either party, and upon such terms as appear to be just, order that the name of any party, whether as plaintiff or defendant, be struck out, and that the name of any party who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court, effectually and completely, to adjudicate upon and settle all the questions involved in the action, be added.

Q. (326) If a defendant is added or substituted, what is the plaintiff's next step?

A. The plaintiff shall sue out an amended writ of summons and serve the new defendant with such writ, or notice in lieu of service thereof, in the same manner as original defendants are served.

Q. (324) A plaintiff, after the issue of his writ, finds out that he has sued the wrong person, what can he do?

A. He may apply to the Court for relief, and the Court or a Judge, if satisfied that there has been a *bona fide* mistake, will strike out the name of the person improperly made a defendant, and order that the name of the proper person to be made defendant be added.

Q. (324) If parties are added as defendants, from what time is the action held to commence as against them?

A. From the time of service on them of the writ of summons, or notice in lieu thereof.

Q. (327) After the delivery of the statement of claim a defendant is added, what is the plaintiff's proper course?

A. The statement of claim shall be amended in such a manner as the making of the new defendant a party may render desirable, and a copy of the amended statement of claim shall be delivered to him at the time when he is served with the writ of summons, or notice, or afterwards within four days of his appearance.

Q. (328, 1313) If a defendant claims contribution from some other person, what course may he take? State the practice.

A. The defendant may, by leave of the Court or a Judge, serve the party from whom he claims contribution with what is called a "third party notice," stamped with the seal with which writs of summons are sealed, stating the nature and grounds of the claim.

The practice is to apply to the Court for leave to issue a notice (called the third party notice), and to file and serve the same within the time limited for delivering the statement of defence, and to serve with it a copy of the statement of claim, and if there be no statement of claim, then with a copy of the writ of summons in the action.

Q. (328, 1313) What steps must be taken by such third party if he desires to dispute the plaintiff's claim against the defendant or his own liability?

A. If such third party desires to dispute the plaintiff's claim as against the defendants or his own liability to the plaintiff, he must enter an appearance in the action within eight days from the service of the notice on him.

Q. (333) How is a plaintiff protected from delay where the defendants cross claim between themselves?

A. The plaintiff is not to be unnecessarily delayed. The Court is to give such direction as may be necessary to prevent such delay to the plaintiff where this can be done, on terms or otherwise, without injustice to the defendants.

Q. (334) In administration suits, who alone is entitled to appear for the estate on the claim of any person not a party?

A. Except by leave of the Court, Judge, or Master, no person other than the executor or administrator shall be entitled to appear on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability.

(*b*) GUARDIANS.

Q. (335) How may insane persons sue or be sued?

A. They may sue as plaintiffs in any action by their committees or next friends, and may defend any action in the like manner, by their committees or guardians appointed for that purpose.

Q. (336) How is the appointment of a "guardian *ad litem*" for a person of unsound mind obtained where no appearance has been entered?

A. The plaintiff may apply to the Court or a Judge for an order that a guardian of such defendant be appointed by whom he may appear and defend the action; and upon such application the official guardian shall be appointed, unless the Judge otherwise directs.

Q. (338) How is service of an office copy of a judgment to be effected on a lunatic or infant?

A. Service is to be effected upon such person or persons and in such manner as the Master before whom the reference under the judgment or order is being prosecuted directs.

Q. (339) How may a person obtain the appointment of a guardian for himself other than the official guardian?

A. He may go before the Judge or Master with the proposed guardian, if he thinks fit to do so. But he must satisfy the Judge or Master by affidavit that the proposed guardian is a fit person to be appointed, and has no interest adverse to that of the person of whom he is to be the guardian in the matter in question; and the Judge or Master may examine the proposed guardian or the person making the affidavit, or require further evidence, until he is satisfied of the propriety of the appointment.

6. JOINDER OF CAUSES OF ACTION.

Q. (341, 1315) What causes of action may be joined with an action for the recovery of land?

A. Only claims in respect of mesne profits or arrears of rent, or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are or is held, or for any wrong or injury to the premises claimed, or for specific performance, or for an injunction or receiver in respect of the said lands or the rents and profits thereof.

Q. (341) How far is a mortgage action deemed to be an action for the recovery of land as respects the joinder of causes of action?

A. A mortgage action shall not be deemed to be an action for the recovery of land, but the plaintiff may in an action for foreclosure or redemption, or for the immediate payment of the mortgage moneys, as the case may be, ask for and obtain a judgment or order against the defendant for the delivery of possession of the mortgaged property to him.

Q. (342) An assignee in insolvency sues on a claim on account of the estate, and joins therewith a claim due to himself personally. May he do so?

A. No. He can only do so by leave of the Court or a Judge.

Q. (343) May separate claims against a husband and his wife be joined together in the same action?

A. Yes.

Q. (343) May separate claims by a husband and his wife be joined together in the same action?

A. Yes.

Q. (344) How far may an executor join personal and estate claims in the same action?

A. The executor may join personal and estate claims in the same action, provided that the personal claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendent sues or is sued as executor.

Q. (346) What provision may the Court make where there are several causes of action joined together in the same action, and it is not convenient to dispose of them all in the one action?

A. The Court or a Judge may order any of such causes of action to be excluded, or may direct the issues respecting the separate causes of action to be tried separately, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the endorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

7. MORTGAGE ACTIONS.

Q. (347) Who may obtain judgment for sale in a mortgage action?

A. The mortgagee may pray for a sale of the mortgaged premises, and that any balance of the mortgage debt remaining due after such sale may be paid by the mortgagor, or any surety for payment of the mortgage debt who is a party to the action, and the same may be adjudged accordingly.

Q. (350) If an incumbrancer desires a sale, what is required of him?

A. If an incumbrancer desires a sale, he is to deposit, in Court, the sum of eighty dollars for the purpose of covering the expenses, unless otherwise ordered by the

Court or a Judge, whereupon an order may be issued on *præcipe* directing a sale of the mortgaged premises instead of a foreclosure.

Q. (352) A plaintiff notifies an incumbrancer who has required a sale that the incumbrancer may conduct the same. To what does this entitle the incumbranc

A. It entitles the incumbrancer to have his deposit returned to him.

Q. (354) How may a mortgagee protect himself against loss where it is possible that the mortgaged property would not sell for sufficient to pay the amount due and costs?

A. He may make the mortgagor a party to the action and claim the right to be paid the deficiency.

Q. (355) If the account in a mortgage action is changed after a report, what may the plaintiff do?

A. The plaintiff may give notice to the party by whom the money is payable that he gives him credit for a sum certain to be named in the notice, and that he claims that there remains due, in respect of such mortgage money, a sum certain, to be also named in the notice.

Q. (360) In an action for foreclosure or sale after default, how may the defendant have the action stopped?

A. The defendant may make a motion to the Court to have the action stayed, by paying into Court the amount due for principal, interest, and costs.

Q. (362) In a redemption action, if default is made in payment according to the report, to what order is the defendant entitled?

A. The defendant is entitled on an *ex parte* application to a final order for foreclosure against the plaintiff, or to an order dismissing the action with costs.

8. CROWN ACTIONS.

Q. (364) What rules of procedure are laid down for the conduct of Crown actions?

A. The procedure and forms which are from time to time in force for the prosecution of rights, claims, or demands, or for the recovery of the possession of any lands, deeds, or personal property between subject and subject, shall be used in the like case for the prosecution of rights, claims, or demands which Her Majesty may have against any person or persons, body or bodies corporate, or for the recovery of the possession of any lands, deeds, or personal property whereunto Her Majesty claims to be entitled, but the right of reply shall be always allowed to the Attorney-General and to any Queen's Counsel having written authority from him for that purpose.

Q. (365) What is the rule as to costs where judgment is given for the Crown?

A. Where judgment is given for the Crown, Her Majesty's Attorney-General may recover costs in the same manner as and under the same rules, regulations, and provisions that apply to the payment or receipt of costs in proceedings between subject and subject.

Q. (366) Where judgment is given against the Crown, what is the rule as to costs?

A. Where judgment is given against the Crown, the defendant is entitled to costs, subject to the same rules as though such proceedings had been had between subject and subject.

Q. (367) How do you obtain the issue of a writ of summons to repeal letters patent, grants, or other matter of record under the Great Seal?

A. Notwithstanding the want of enrollment, writs of summons to repeal letters patent, grants, or other matter of record under the Great Seal, shall be issued, and all the proceedings thereafter shall be the same as the proceedings in an ordinary action; but before the issue of any such writ the party making application for the same, in addition to the fiat of the Attorney-General, must file in the Court from which the writ is to be issued an exemplification under the Great Seal of the Province of the letters patent, grant, or other matter of record with respect to which the said writ is to be issued.

CHAPTER III.

PLEADINGS

(*a*) Statement of Claim.

Q. (369) What rules regulate the delivery of the statement of claim?

A. (*a*) If the defendant does not state that he does not require the delivery of a statement of claim, the plaintiff shall deliver it within three months from the time of defendant's entering his appearance, unless otherwise ordered by the Court or a Judge.

(*b*) If the defendant states that he does not require the delivery of a statement of claim, the plaintiff shall file a copy of the summons, with all endorsements thereon, within the same time.

(*c*) The plaintiff may, if he thinks fit, deliver the statement of claim with the writ of summons, or notice in lieu thereof, or at any time afterwards, either before or after appearance, and though the defendant may have appeared and stated that he does not require the delivery of a statement of claim, provided that in no case where a defendant has appeared shall a statement be delivered more than three months after the appearance has been entered, unless otherwise ordered by the Court or a Judge.

Q. (370) In what cases is notice allowed in lieu of statement of claim?

A. In cases where the writ is specially endorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver a notice to the effect that his claim is that which appears by the endorsement upon the writ of the summons.

(*b*) Defence and Counterclaim.

Q. (371) Within what time must the statement of defence be delivered?

A. Within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last.

Q. (372) A defendant appears and does not demand a statement of claim, within what time must his defence be filed?

A. Within eight days after his appearance.

Q. (373) What right or claim may the defendant set up by way of counterclaim against the claim of the plaintiff?

A. He may set up by way of counterclaim any right or claim whether the same sound in damages or not.

Q. (373) What is the effect of a counterclaim?

A. A counterclaim shall have the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim.

Q. (376-7) If a defendant sets up a counterclaim bringing into issue questions between himself, the plaintiff, and third persons, what requisites?

A. Where a defendant sets up a counterclaim, he shall entitle it as a statement of claim, setting forth the names of all persons who, if such counterclaim were to be enforced by cross-action, would be defendants in such cross-action, and he shall deliver his counterclaim to such of them as are parties to the action within the same time as he is required to deliver it to the plaintiff, and any parties who are not parties to the action shall be summoned to appear by being served with a copy of the counterclaim, and such service shall be regulated by the same rules as govern the service of a writ of summons, so that the person served must appear thereto, as if he had been served with a writ of summons to appear in an action.

Q. (380) Within what time must a defence to a counterclaim be filed by the plaintiff?

A. The plaintiff shall deliver his defence to the counterclaim within eight days from the service thereof on him.

Q. (381) Within what time must a reply be delivered?

A. The plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered.

Q. (383) Within what time must every pleading subsequent to reply be delivered?

A. Every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading.

(*c*) DEMURRERS.

Q. (384, 1322) What is a demurrer, and what are its requisites?

A. A demurrer is a motion to set aside any pleading of the opposite party as being bad in law or in fact, as setting up some distinct cause of action, ground of defence, counterclaim, or reply, on the ground that the facts alleged therein do not show any cause of action or ground of defence to the claim or any part thereof. It is necessary that it should state whether it is a denial of the whole pleading, or part thereof, and, if of part, to what part, and it shall state some defect in law. The party will not be confined on the argument to such ground.

Q. (1322) When are demurrers allowed?

A. No demurrers are now allowed, but any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who

tries the cause at or after the trial, provided that by consent of the parties the same may be set down for hearing and disposed of at any time before the trial, and after such hearing the Court or Judge may dismiss the action or make such other order therein as may be just, or the Court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, or that it is frivolous or vexatious, in which cause the Court or Judge may order the action to be stayed or dismissed, or such judgment to be entered, as may be just.

(*d*) Close of Pleadings.

Q. (392, 1323) When are pleadings deemed to be closed?

A. When either party has joined issue upon any pleading of the opposite party simply, without adding any further or other pleading thereto; or as soon as the time for amending the pleadings, or for delivering the reply or subsequent pleading has expired, without any joinder of issue being pleaded by either party.

Q. (393, 1324) If a party makes default in pleading, what right has the opposite party?

A. The opposite party may, at any time before the pleading is filed, upon proof of the default, by *præcipe* to the officer with whom the pleadings are filed, require him to note that the proceedings in the action are closed as to the party in default, and thereupon the officer shall enter such note in the pleadings book accordingly, and thereafter no pleading by the party in default shall be received or filed without the order of a Judge.

(*e*) PLEADING GENERALLY.

Q. (395) How many copies of a pleading are allowed to a party?

A. Not more than four copies.

Q. (397) What particulars are required as to pleadings?

A. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is filed, and with the reference to the division to which the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent (if any) of the party filing the same, or the name and address of the party filing the same, if he does not act by a solicitor.

Q. (399) What must the pleadings contain?

A. The pleadings must contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved. Its dates, sums, and numbers shall be expressed in figures, and the signature of counsel shall not be necessary.

Q. (400) What is the rule as to admissions in pleadings?

A. Each party is to admit such of the material allegations contained in the statement of claim or defence of the opposite party as are true, or he may give notice, by his

own statement or otherwise, that he admits, for the purposes of the action, the truth of the case generally, or of any part of the case stated or referred to in the statement of claim or defence of the opposite party, or any other party.

Q. (402) What is the general rule as to pleading facts?

A. Each party in any pleading must allege all such facts not appearing in the previous pleading (if any) as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not so raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings.

Q. (403) How is the silence of a pleading to be construed?

A. The silence of a pleading, as to any allegations contained in the previous pleading of the opposite party, is not to be construed into an implied admission of the truth of such allegation.

Q. (404) How must a party claim relief?

A. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief.

Q. (405) When a plaintiff seeks relief in respect of several distinct claims, how must they be stated?

A. They must be stated separately and distinctly, as far as may be.

Q. (406) How do you plead the contents of a document?

A. By stating the effect of the document as briefly as possible, unless the precise words of the document, or any part thereof, are material.

Q. (407-8) What is the rule as to the allegation in a pleading of malice or of notice?

A. Where it is necessary to allege notice or malice, it shall be sufficient to allege the same as a fact.

Q. (409) A contract arises from a series of letters, how must the contract be set up in the pleading?

A. It will be sufficient to allege the contract or relationship as a fact, and to refer generally to the letters without setting them out in detail.

Q. (410) A plaintiff is suing on a bill of exchange, and alleges that he gave consideration therefor, is this allegation necessary? Why?

A. No. The party need not in any pleading allege any matter of fact which the law presumes in his favor, unless the same has first been specifically denied.

Q. (411) If either party wishes to deny the right of any other party to claim in any representative or other alleged capacity, what must he do?

A. He must deny the same specifically, or the same will be taken to be admitted.

Q. (413) What is the effect of the denial of a contract by a pleading?

A. Such denial shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

Q. (414) What is a pleading in abatement?

A. A pleading in abatement is one which shows some ground for abating or quashing the writ in a civil action, or the indictment in a criminal one, and makes prayer to that effect by offering a formal objection to the writ without denying the right of action.

Q. (415) What is a new assignment?

A. It is a pleading by way of explanation where a matter of fact has been pleaded in such a way that the opposite party has been misled.

Q. (416) In what cases may the defendant (in possession) in an action for the recovery of land plead his title?

A. When his defence depends upon an equitable estate or right, or when he claims relief upon any equitable ground against any right or title asserted by the plaintiff.

Q. (417) What is meant by pleading "not guilty by statute"?

A. It is the pleading of a statute as a defence or a justification of his acts or position by the defendant.

Q. (418) How must a defendant plead "not guilty by statute"?

A. He must insert in the margin of the paragraph of the statement of defence containing the plea the words "By Statute," together with the year or years of the reign in which the Act or Acts of Parliament upon which he relies for that purpose were passed, and also the chapter and section of each of such Acts, and shall specify whether such Acts are public or otherwise.

Q. (417) What defences may the defendant plead together with the defence of "not guilty by statute"?

A. The defendant shall not plead any other defence without the leave of the Court or a Judge.

Q. (417) In what case is the defendant restricted to one defence?

A. Where he pleads "not guilty by statute."

(*f*) STRIKING OUT, AMENDING PLEADINGS, ETC.

Q. (444) What is the general rule as to amendments?

A. The Court or a Judge may at any time, and on such terms as to costs or otherwise as to the Court or Judge

may seem just, amend any defect or error in the proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question or issue raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case.

Q. (423, 1326) What is meant by a scandalous pleading, and what power has the Court as to?

A. A pleading is deemed to be scandalous which tends to prejudice, embarrass, or delay the fair trial of the action, and the Court has power to direct the scandalous matter to be expunged, and may in all cases, and upon such terms as to costs or otherwise as may be deemed just, order a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceedings requiring particulars.

Q. (424) When may the plaintiff amend his statement of claim without leave?

A. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who last appears.

Q. (425, 1327) When may a defendant amend his counterclaim without leave?

A. He cannot do so without leave; but may, on an application in Chambers, be allowed to amend the same upon such terms, in all respects, as the Court or Judge may seem fit.

Q. (426, 1328) If a party amend his pleadings, within what time must the opposite party attack the amendment, if desirous?

A. Within eight days after the delivery to him of the amended pleading.

Q. (427) A defendant amends his counterclaim, and the plaintiff desires to amend his statement of claim in consequence, within what time must he do so?

A. Within four days after the delivery of the pleading so amended, or within such further time as the Court or a Judge may allow.

Q. (430) If no time for amendment is fixed in an order directing an amendment, what time is allowed for the amendment?

A. Fourteen days from the date of the order directing the amendment.

(*g*) Pleading Matters Arising Pending the Action.

Q. (435) A ground of defence arises after the counterclaim has been delivered, how and

within what time may the plaintiff set the same up?

A. It may be pleaded by the plaintiff, or be introduced by amendment into the statement of claim within three weeks after the counterclaim or the last of the counterclaims has been delivered, unless the time has been extended by the Court or a Judge.

Q (433) Within what time must an amended pleading be delivered?

A. Such pleading shall be delivered to the opposite party within the time allowed for the amending of the same.

Q. (436) A defendant ascertains that he has a further ground of defence arising after the delivery of the statement of defence, how may he set the same up?

A. He may, within eight days after such ground of defence has arisen, deliver a further defence setting forth the same, or introduce the same by amendment into his statement of defence.

Q. (437) A ground of defence to a counterclaim arises after the expiration of three weeks from the delivery of the counterclaim, how may the plaintiff set the same up? What is required in such a case?

A. The plaintiff may, within eight days after such ground of defence has arisen, deliver a further pleading

setting forth the same, or may introduce such new ground of defence into his statement of claim by amendment.

Q. (440) If a plaintiff wishes to confess the defence, how may he do so? What is the effect?

A. The plaintiff may deliver a confession of such defence, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

CHAPTER IV.

MISCELLANEOUS PROCEEDINGS IN AN ACTION.

(*a*) Effect of Non-Compliance and Errors.

Q. (441) What is the effect of a formal objection?

A. No proceeding shall be defeated by any formal objection.

Q. (442) What is the effect of non-compliance with any of the Consolidated Rules?

A. It shall not render the writ or any other proceeding in any action or matter void, unless the Court or a Judge so directs, but such proceedings may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such a manner and upon such terms as the Court or a Judge thinks fit.

Q. (443) A party desires to set aside a proceeding for irregularity, how may this be done?

A. The party must not take any further steps after knowledge of the irregularity, and must make an application to set aside the proceeding within a reasonable time.

(*b*) AMENDMENTS.

Q. (445) What power has the Court where an action has been commenced in the name of the wrong person as plaintiff?

A. The Court or a Judge, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just.

Q. (446) If an amendment is made at the trial, what is the procedure?

A. It is not necessary to draw up or issue an order for the amendment, but it will be sufficient if the amendment be made at once on the record, or a minute of the amendment to be made may be entered in the book of the Registrar, Deputy or Local Registrar, Clerk or Marshal, and the amendment may be formally made at any time afterwards.

(*c*) NOTICE AND WRITTEN PROCEEDINGS GENERALLY.

Q. (451) In what cases is the short style sufficient?

A. In all proceedings in a cause or matter, except pleadings, petitions in the nature of pleadings, judgments, and decretal orders, the short style of cause is sufficient.

Q. (455) What is a "demand"?

A. A demand is a written application for a copy of any pleading, affidavit, exhibit, or document in the possession of the opposite party and filed by him.

Q. (456) If a demand is made for a copy of an affidavit, within what time must it be served?

A. Within forty-eight hours from the time of the demand.

(*d*) SERVICE OF PAPERS.

Q. (462, 1330) How is service of papers effected on a party who has ceased to have a solicitor?

A. If the party has properly given the address for service, then all writs, notices, orders, appointments, warrants, and other documents, proceedings, and written communications, shall be deemed to be sufficiently served upon such party if left for him at such address for service; but if he does not give such address for service, then all writs, notices, orders, warrants, and other documents, proceedings, and written communications not requiring personal service upon the party to be affected thereby, shall, unless the Court or a Judge otherwise directs, be sufficiently served upon the party by posting up a copy in the office in which the proceedings are being conducted.

Q. (463) How is an order changing solicitor obtained?

A. On *præcipe*.

Q. (465) A obtains a judgment against B, who has mortgaged his land to C. In foreclosure proceedings in which A is made a party, how may A be served?

A. He may be served by serving the solicitor who acted for him in the action in which the judgment was recovered.

Q. (466) In what cases on the service of an order must the original be shown?

A. In cases of arrest or attachment.

Q. (467) What power has the Court to order substitutional or other service, or to dispense with service?

A. Where it appears, upon the hearing of any matter, that by reason of absence, or for any other sufficient cause, that service cannot be made, or ought to be dispensed with, the Court may order that such service be dispensed with, or direct service by notice, or advertisement, or otherwise, or may order substitutional service.

(*e*) Time.

Q. (472) If a time is limited by months, what months are meant?

A. Calendar months.

Q. (473) How are holidays to be reckoned in the computation of time?

A. When the time limited for doing any act or taking any proceeding is less than six days, holidays shall not be reckoned in the computation of such limited time.

Q. (474-5) What difference is there between "days" and "clear days"?

A. In all cases in which any particular number of days not expressed to be clear days are prescribed, the same shall be reckoned exclusive of the first day, and inclusive of the last day; but in all cases expressed to be "clear days," or where the term "at least" is added, both days shall be excluded.

Q. (476) If the time for doing an act expires on a Sunday, when may it be done?

A. On the next day on which the offices are open.

Q. (477) What is the rule as to time where the plaintiff is ordered to give security for costs?

A. The day on which the order is served, and the time thenceforward until and including the day on which the security is given, is not to be reckoned in the computation of time allowed to a defendant to appear to deliver his defence.

Q. (479) What notice must be given of a motion?

A. At least two "clear days."

Q. (480) Between what hours of the day must service of pleadings, etc., be effected?

A. Service shall be effected before the hour of four o'clock in the afternoon, except on Saturday, when it shall be effected before the hour of two o'clock in the afternoon.

Q. (483) What is the rule as to pleading in long vacation?

A. No pleading shall be delivered or amended in the long vacation except by consent, or unless directed by the Court or a Judge.

Q. (484, 1331) For what purposes is the long vacation or the Christmas vacation not to be reckoned?

A. They shall not be reckoned in the computation of the times appointed or allowed for filing, amending, or delivering any pleading, or in the times allowed for the following purposes:

1. Appeals to a Judge in Chambers.

2. Master's reports becoming absolute.

3. Moving to discharge an order adding or changing parties to the action (under rule 622).

4. Moving to add to, vary, or set aside a judgment by any party served therewith.

5. Doing any act or taking any proceeding in appealing to the Court of Appeal, except in County Court appeals.

(*f*) EXAMINATION FOR DISCOVERY.

R. (487-8) What power is there to obtain the examination of a party before the trial?

A. Any party to an action or issue, whether plaintiff or defendant, may, without any special order, be orally examined before the trial touching the matters in question in the action by any party adverse in point of interest, and a person for whose immediate benefit an action is prosecuted or defended is to be regarded as a party for the purpose of examination.

Q. (489) When may such examinations be held?

A. The examination on the part of the plaintiff may take place at any time after the statement of defence of the party to be examined has been delivered, or after the time for delivering the same has expired; and the examination on the part of the defendant may take place at any time after such defendant has delivered his statement of defence; and the examination of any party to an issue at any time after the issue has been filed.

Q. (490-1) What is the practice on the examination of opposite parties before the trial?

A. The party entitled to the examination is to procure from the special examiner, or person who is to take the examination, an appointment, and the party to be examined, upon being served with a copy of such appointment and a subpœna, and upon the payment to him of the proper fees,

shall attend thereon and submit to examination, and a copy of the appointment shall be served upon the solicitor of the party to be examined, at least forty-eight hours before the examination.

Q. (493) What rule is there as to the production of documents on such examination?

A. The party or person to be examined, if so required by notice, shall produce, on the examination, all books, papers, and documents which he would be bound to produce at the trial under a subpœna *duces tecum*.

Q. (494-5) When may the parties or others so examined be examined on their own behalf by way of explanatory examination?

A. On an examination before the trial any party or officer of a body corporate so examined may be further examined on his own behalf, or on the behalf of the body corporate, in relation to any matter respecting which he has been examined in chief, and such examination shall be proceeded with immediately after the examination in chief.

Q. (498) What is the rule as to appeals from the decision of a special examiner, and what is his duty in such a case?

A. Either party may appeal from the order of the special examiner, and thereupon the examiner is to certify under his hand the question raised and the order made thereon.

Q. (499) What is the penalty if a party refuses or neglects to attend, or refuses to be sworn, or to answer?

A. The party refusing shall be deemed guilty of a contempt of Court, and proceedings may be forthwith had by attachment. If a defendant, he shall be liable to have his defence (if any) struck out, and to be placed in the same position as if he had not defended, and the party examining him may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

Q. (504) After the close of the examination, what is done with the depositions?

A. At the request of any interested party, and upon payment of the fees of the examiner, the depositions taken down by the examiner shall be returned by the examiner to and kept in the office of the Court in which the proceedings are being carried on.

Q. (506) What is the rule as to using the examination as evidence at the trial?

A. Any party may, at the trial of an action or issue, use as evidence any part of the examination of the opposite parties, provided always that in such a case the Judge may look at the whole of the examination; and if he is of the opinion that any other part is so connected with the part to be so used that the last-mentioned part ought not to be used without such other part, he may direct such other part to be put in in evidence.

(*g*) PRODUCTION AND INSPECTION OF DOCUMENTS.

Q. (507) What power has the Court to order the production of documents?

A. The Court or a Judge may at any time pending any action or proceeding order the production by any party thereto upon oath of such of the documents in his possession or power relating to any matter in question in such action or proceeding, as the Court or a Judge thinks right, and the Court may deal with such documents, when produced, in such manner as appears just.

Q. (508) When may an order for the production of documents be obtained upon *præcipe*?

A. Any party may after the defence is delivered; a plaintiff may after the time for delivering the defence has expired; and any party to an issue may, after the issue has been filed, obtain an order of course upon *præcipe* for discovery.

Q. (510) What parties to an action will be ordered to produce documents?

A. Any person for whose immediate benefit the action is prosecuted or defended.

Q. (514) How may a party obtain inspection of documents, and what is the penalty for refusing?

A. By serving the opposite party with a notice to produce such documents for the inspection of the party giving the notice, and to permit him to take copies thereof; and any party not complying with such notice shall not be at liberty to put any such document in evidence on his own behalf in the action or proceeding unless he satisfies the Court that the document relates only to his own title, or gives some other sufficient excuse for not complying with the notice.

Q. (516) On the receipt of a notice to produce for inspection, what is the duty of the party receiving the notice?

A. The party to whom such notice is given shall within two days from the receipt of the notice, if all the documents therein referred to have been set forth by him in his affidavit on production, or, if any of the documents referred to in the notice have not been set forth by him in such affidavit, then within four days from the receipt of the notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which of the documents he objects to produce and on what ground.

Q. (520) What is the penalty for refusal to comply with an order for production or inspection of documents?

A. If any party fails to comply with any order for production or inspection of documents, he shall be liable to

attachment; and, if a defendant, he shall be liable to have his defence struck out, and to be placed in the same position as if he had not defended.

Q. (523) What is the duty of a solicitor on whom an order for discovery or inspection is served?

A. To give notice of the service of such order on him to his client.

(*h*) Motions and other Applications.

Q. (525) Where an application is authorized to be made to the Court or a Judge, how must it be made?

A. Such application shall be made by motion.

Q. (527, 536) In what cases may *ex parte* orders be made, and when may they be moved against?

A. The Court or a Judge, if satisfied that the delay caused by proceeding by notice of motion would or might entail irreparable or serious mischief, may make any order *ex parte*, and any party affected by such order may move to rescind or vary the same within four days from the time of its coming to his notice.

Q. (530) When may an application for "interim alimony" be made?

A. As soon as the time for delivering the defence has expired.

Q. (534) What is required in a notice of motion to set aside a proceeding on the ground of irregularity?

A. Notice of motion to set aside any proceeding for irregularity must specify clearly the irregularity complained of, and the several objections intended to be insisted upon.

Q. (535) What is required in a notice of appeal from an award?

A. Every notice of motion, by way of appeal from or to set aside an award, shall specify the grounds intended to be insisted upon.

Q. (538, 540, 1341) How are special cases to be set down?

A. Special cases are to be set down by delivering to the proper officer a *præcipe* specifying the matter to be set down, and the day for argument thereof, and requiring him to set the same down, and six clear days' notice must be given to the opposite party, and a copy of the special case shall be left at the office of the Clerk of Records and Writs for the use of the Judge.

Q. (542) What business will be disposed of on application in Chambers?

A. The following business shall be disposed of in Chambers, together with such other matters as the Court, from time to time, thinks may be more conveniently disposed of than in Court:

1. Sales of infants' estates under the R.S.O.

2. Guardianship, maintenance, and advancement of infants.

3. The administration of estates upon motion, without action.

4. Relating to the conduct of actions or matters.

5. Matters connected with the management of property.

6. The payment into Court of moneys by parties desiring on their own behalf to pay in the same.

Q. (546) What orders must be entered in full?

A. All orders for administration or partition, all orders declaring persons lunatics, or for the sale of infants' estates, or for the payment of money into or out of Court, or for the continuing of proceedings upon the death or transmission of interest of any party to an action, and all final orders for sale or foreclosure, and all vesting orders, shall be entered in full.

(*i*) Inquiries and Accounts.

Q. (550) When will the Court refer to arbitration?

A. The Court will not refer to arbitration.

Q. (551) What power or reference has the Court?

A. The Court or a Judge may at any stage of the proceedings in a cause or matter direct any necessary inquiries or accounts to be made or taken.

Q. (552) What clauses are read into an order of references?

A. 1. The Referee shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried pursuant to the statute.

2. The Referee may examine the parties to the action and their respective witnesses upon oath or affirmation, and the parties shall produce all books, deeds, etc., in their custody or power relating to the matters ordered to be tried.

(*j*) Special Cases.

Q. (554) What is a special case?

A. A special case is a case stating the questions of law arising in the action or matter in such a form that the Court may form an opinion on the same.

Q. (557) What are the requisites of a special case in the case of a person under disability?

A. The case shall not be set down for argument without the leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affects the interest of such person under disability, are true.

(*k*) Evidence Generally.

1. *Subpœna, etc.*

Q. (560) How do you obtain the production of an original memorial from the registry office for use on a trial?

A. By the production of the order of the Court or a Judge to the officer issuing the subpœna, and filing the same with him, and making the writ conformable to the description of the document required to be produced by such order.

Q. (562) What provision is there for calling the opposite party as a witness at the trial?

A. It is necessary to either subpœna such party, or to give him or his solicitor at least eight days' notice of the intention to examine him as a witness in the case.

Q. (563) What is the penalty for non-attendance on a subpœna, and what is a bench warrant?

A. The Judge may, upon proof of the service of the subpœna upon any witness who fails to attend, and that a sufficient sum for his fees as a witness has been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, by his warrant directed to any sheriff or other officer of the Court, cause such witness to be apprehended and forthwith brought before him, or any other Judge, to give evidence.

2. *Evidence at Trials and References.*

Q. (564) What is the general rule as to evidence on a trial?

A. The witness shall be examined *viva voce* and in open Court, but the Court or a Judge may, at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, or that any witness whose attendance ought to be dispensed with be examined before an examiner.

Q. (567) What is a trial by affidavit?

A. A trial by affidavit is the proving of particular facts or circumstances by affidavits, which may be used by consent or by leave of the Court.

Q. (573) In what cases in actions for libel may the defendant give evidence in chief of the character of the plaintiff?

A. In cases in which the plaintiff, by his defence, asserts the truth of the statements complained of, and in cases where he furnishes, at least seven days before the trial, particulars to the plaintiff of the matters as to which he intends to give evidence in chief, with a view to the mitigation of damages.

Q. (575) How is service of a notice to produce proved?

A. By an affidavit of the solicitor in the cause, or his clerk, of the service of the notice to produce, and of the

time when it was served, together with a copy of such notice to produce, which shall be sufficient evidence of the service of the notice and of the time when it was served.

3. *Evidence on Motions.*

Q. (578) What restriction is there on the right to examine a party for the purposes of a motion?

A. The motion must be pending.

Q. (581) What is the penalty for disobedience of an order for the examination of a person as a witness on a motion?

A. The wilful disobedience of an order is a contempt of Court, and proceedings may be forthwith had by attachment.

Q. (582) How is the attendance of a prisoner for the purposes of examination obtained?

A. By obtaining an order from the Court or a Judge, which order may be issued by the Court or a Judge, under such circumstances as appear to warrant the production of the prisoner.

Q. (584) How is the default in payment of money directed to be paid into a bank proved?

A. Where default is made in the payment of money appointed to be paid into a bank, the certificate of the

cashier, manager, or agent of the bank where the same is made payable, or of the like bank officer, is sufficient evidence of default.

Q. (585) What is the rule as to the reception of further evidence on appeal?

A. The Court or a Judge has full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination before the Court or the Judge appealed to, or by affidavit, or by depositions taken before a special examiner or commissioner.

4. *Commissions to Examine Witnesses.*

Q. (586) How is a commission issued?

A. In case the opposite party requires a commission to examine a non-resident party, he must state, by affidavit, the facts intended to be proved before such commission, and the Court in which the action has been brought, or any Judge thereof, may, at the instance of such party, if satisfied that such commission is applied for in good faith, issue a commission for the examination of such non-resident party, in the same manner as a commission may be issued for the examination of witnesses.

Q. (587) What is the effect if such party refuses to attend or be examined on such commission?

A. The Judge of the Court in which the action or trial is pending may authorize a verdict or judgment to pass against the party, or he may be non-suited.

5. *Affidavits.*

Q. (605) How must an affidavit be drawn up?

A. Every affidavit must be drawn up in the first person and state the name of the deponent at the commencement in full, his description and true place of abode, and it must be signed by him.

Q. (609) What is the general rule as to statements in affidavits?

A. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted.

Q. (612) What requisite is there when an affidavit is made by an illiterate person (or blind)?

A. The officer taking the affidavit shall certify in the jurat that the affidavit was read in his presence to the deponent, and that the deponent seemed perfectly to understand it, and that the deponent made his or her signature or mark in the presence of the officer.

Q. (616) What must be done before a notice of motion or petition can be served?

A. All the affidavits upon which a notice of motion or petition is founded must be filed before the service of the notice of motion or petition.

(*l*) TRANSMISSION OF INTEREST PENDENTE LITE.

Q. (620) A person becomes insolvent during an action, what is the effect?

A. The action shall not become abated by reason of the bankruptcy of any of the parties.

Q. (620) A woman marries while an action is pending, what is the effect?

A. The action shall not become abated by reason of the marriage of any of the parties.

Q. (626) Within what time may a person under disability, served with an order adding him as a party, move against such order?

A. Within fourteen days from the appointment of a guardian "*ad litem.*"

Q. (631) An action is brought on a promissory note against A, B, and C, and during the action C dies, what is the result?

A. An action may nevertheless be brought against the executors or administrators of such deceased defendant.

(*m*) PAYMENT INTO COURT IN SATISFACTION.

Q. (632) When may the defendant pay money into Court?

A. The defendant may, either before or at the time of delivering his defence or afterwards, by leave of the Court or a Judge, pay into Court a sum of money in satisfaction of the cause or a part of the cause of action, or one or more of the causes of action for which the plaintiff sues.

Q. (632) How far is the payment of money into Court deemed an admission of the cause of action?

A. Such payment is not deemed to be an admission of the cause of action in respect of which it is so paid.

Q. (635) How may the plaintiff take the money if paid into Court?

A. If the plaintiff takes the money out of Court, he must take it in satisfaction of the very cause of action in respect of which it was paid in.

Q. (636) What must the plaintiff do where money is paid into Court?

A. The plaintiff shall make his election to take the money out of Court within four days after the day on which he receives notice of such payment in, if the payment is made before defence; and if the money is paid in with the defence, he shall elect either before replying or before the expiration of the time for replying, whichever first happens.

Q. (637) What are the plaintiff's rights as to costs where money is paid into Court and he takes it out?

A. He may tax his costs of the action and sign judgment therefor, unless the defendant pays them within forty-eight hours after taxation.

Q. (640) What requisite is there for a defence setting up tender before action?

A. With a defence setting up a tender before action brought, the sum of money alleged to have been tendered must be brought into Court.

(*n*) DISCONTINUANCE.

Q. (641) What is a discontinuance, and what is its effects?

A. A discontinuance is a notice in writing filed and served, stating that the plaintiff wholly discontinues his action, or stating that he withdraws a part or parts of his alleged cause of complaint, and it has the effect of entitling the defendant to the costs of the action, if wholly discontinued against him, or to the costs occasioned by the withdrawal of the matter withdrawn, if not wholly discontinued.

Q. (641) What effect has a notice of discontinuance on a subsequent action for the same subject-matter?

A. It has no effect, and is not a defence to any subsequent action.

Q. (641) What power has the Court to order a discontinuance after the trial?

A. The Court or a Judge may, after the trial, order the action to be discontinued.

Q. (642) How far may a defendant withdraw his defence or counterclaim ?

A. The defendant may, with the leave of the Court or a Judge, but not otherwise, withdraw his defence or counterclaim, or both, or any part of either or both, upon such terms as may be imposed.

(*o*) Compounding Penal Actions.

Q. (643-645) How and when may a penal action be compounded ?

A. By leave of the Crown, and by payment of the Queen's proportion of the composition into the Accountant's office, for the use of Her Majesty. Such leave to compound shall not be given in cases where part of the penalty goes to the Crown, unless notice has been given to the proper officer, but in other cases it may.

(*p*) Dismissal of Actions.

(*q*) Transfer of Actions.

Q. (646, 1348) In what cases may an action be dismissed for want of prosecution ?

A. Where the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, and where the pleadings are closed six weeks before the commencement of any sitting of the High Court for which the plaintiff might give notice of trial, and he does not give notice of trial therefor, and proceed to trial pursuant to such notice, the action may be dismissed for want of prosecution.

Q. (648) In what other cases may the defendant move to dismiss the action?

A. Where the plaintiff refuses or neglects to attend at the time and place appointed for his examination, or fails to comply with any order for discovery or production or inspection of documents, the defendant may move to dismiss the action.

Q. (651) What special rule as to transfer of administration actions from one division to another?

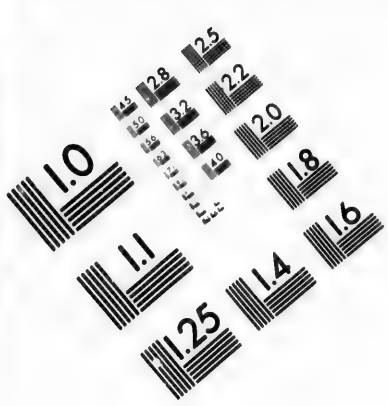
A. Where an order has been made for the administration of the assets of any testator or intestate, a Judge of any Division shall have power, without any further consent, to order the transfer to such Division of any action pending in any other Division by or against the executors or administrators of the testator or intestate whose assets are being so administered.

(*r*) TRIAL.

(1) *Generally.*

Q. (653) What is meant by "venue," and how far does it exist?

A. Venue is the county in which the action is intended to be tried, and from the body of which the jurors are to be summoned. Under the Consolidated Rules there is no local venue for the trial of any action except the action of ejectment.



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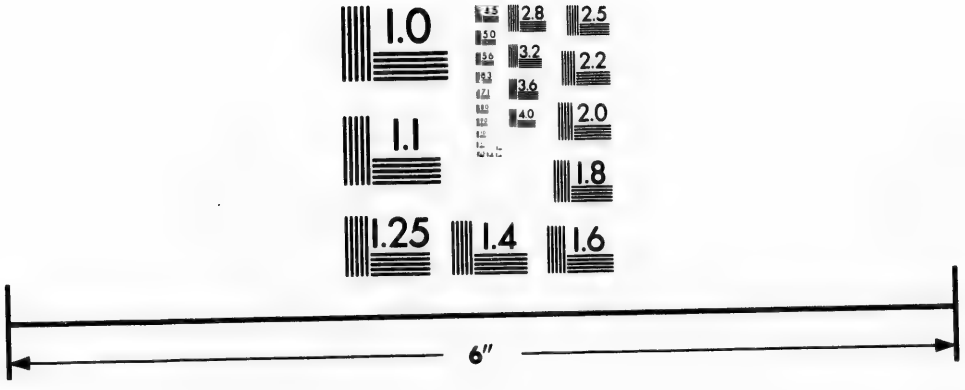

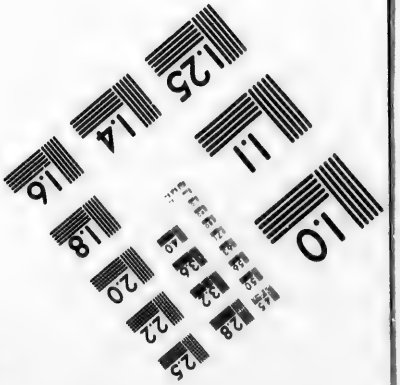

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Q. (654) What and when must notice of trial be given ?

A. Notice of trial must be given after the close of the pleadings, and may be given for the next sittings of the Court, which shall not be less than ten days thereafter at the place of trial named or ordered.

Q. (655) What general powers has the Court as to the issues raised in any action ?

A. The Court or a Judge may at any time, in any action, order that different questions of fact arising therein be tried by different modes, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

Q. (656) When may a Jury trial be held before two or more Judges ?

A. Only when it is specially ordered.

Q. (662) What is a trial at bar, how regulated, and what notice of trial is necessary ?

A. It is a trial before the Full Court of the Division of the High Court in which the action is brought, and the action is regulated by the Judges attached to such Division, who may appoint such day or days for the trial thereof as they may think fit. Notice of trial at Bar must be given to the Registrar of the Court before giving notice of trial to

the party, and ten days' notice of trial must be given, unless the party to whom it is given has consented to take short notice of trial. Short notice of trial is five days' notice.

Q (663) Who may enter an action for trial?

A. Either party may enter an action for trial.

Q. (663) Who has the preference?

A. If both parties enter an action for trial, it shall be tried in the order of the plaintiff's entry.

Q. (664) What is the "Record"?

A. The "Record" is a copy of the whole of the pleadings in the action delivered to the proper officer for the use of the Judge at the trial, and certified as a true copy by the officer having charge of the pleadings filed.

Q. (665) When must an action be entered for trial?

A. Not later than the third day next before the first day of the sittings.

Q. (670) How may a "Record" be withdrawn?

A. By producing to the proper officer a consent in writing signed by the parties, but not otherwise, except by an order of the Court.

Q. (672-3) What is the effect of the non-appearance of the defendant or plaintiff at the trial?

A. If the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him; and if the defendant appears, and the plaintiff does not appear, the defendant shall be entitled to judgment dismissing the action, and, if he has a counterclaim, he may prove such claim so far as the burden of proof lies upon him.

Q. (674) What is the rule as to the exclusion of witnesses from the Court room?

A. The witnesses may be excluded from the Court room at the request of either party, whether they are parties to the suit or not.

Q. (675) How are the addresses of counsel regulated?

A. The party who begins, or his counsel, in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence, shall be allowed to address the jury a second time at the close of the case, for the purpose of summing up the evidence, and the party on the other side, or his counsel, shall then be allowed to open his case, and also to sum up the evidence (if any). The right to reply shall be the same as present.

Q. (676) What power has the Court where, through accident, the party omits or fails to prove some fact material to his case?

A. The Judge may proceed with the trial, subject to such fact being afterwards proved at such time, and subject to such terms and conditions, as the Judge may direct.

Q. (676) What may the Judge do if the case is being tried by a jury?

A. He may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed, and, if not so proved, judgment is to be entered for the opposite party, unless the Court or a Judge otherwise directs.

Q. (676) In what actions does this rule not apply?

A. In actions for libel.

Q. (677) Who is to try equitable issues?

A. The Court or a Judge, without the intervention of a jury.

Q. (678) What is the rule as to the trial of legal and equitable issues?

A. They shall be tried at the same time, unless the Court or a Judge, or the Judge presiding at the trial, otherwise directs.

Q. (686) What liability is imposed on a solicitor by whose default a paper is not produced at the trial?

A. The liability to personally pay to the parties such costs as the Court thinks fit to award.

(2) *Vexatious Defences in Actions to Recover Land.*

Q. (698) What special provision as to actions for the recovery of land?

A. The plaintiff or his solicitor may serve a notice upon the defendant or his solicitor, stating that he claims the premises for which the action is brought as the *bona fide* purchaser thereof, and that he (the defendant) will be required to show upon the trial of the cause what legal right he has to the possession of the premises.

(3) *Inspection of Property.*

Q. (701-2) What powers as to inspection of property are allowed?

A. Any Judge by whom any cause or matter may be heard or tried, with or without a jury, or before whom any cause or matter may be brought by way of appeal, may inspect any property or thing concerning which any questions may arise therein, and either party in an action may apply to the Court or a Judge for an order for the inspection by the jury or by himself, or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute.

CHAPTER V.

JUDGMENTS—MOTIONS FOR JUDGMENT, ETC.

(1) DEFAULT OF APPEARANCE.

(*a*) *Generally.*

Q. (704) In case of default of appearance, if the plaintiff wishes to sign judgment, what papers must be filed?

A. He must file an affidavit of service of the writ of summons, or a notice in lieu of service, or the undertaking of the defendant's solicitor accepting service and agreeing to enter an appearance, together with an affidavit verifying the undertaking filed, as the case may be.

Q. (705) What rights has the plaintiff where he has specially endorsed his writ of summons and the defendant does not appear thereto?

A. He may sign judgment for any sum not exceeding the sum endorsed on the writ, together with interest and costs, and he may forthwith issue execution on such judgment.

Q. (706) What are the plaintiff's rights where there are several defendants and only some of them appear, the writ being specially endorsed ?

A. He may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against those who have appeared.

Q. (707) The plaintiff's claim is for a liquidated demand, but he does not specially endorse his writ. The defendant does not appear. How may he obtain speedy judgment ?

A. He may file an affidavit of service of the summons or notice, and file and serve a statement of the particulars of his claim, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs, provided the amount shall not be more than the sum endorsed on the writ, besides costs.

Q. (708) The plaintiff's claim is not for a liquidated demand, but for damages. The defendant does not appear. What are the rights of the plaintiff ?

A. He need not deliver a statement of claim, but may enter interlocutory judgment, and the damages shall be assessed at a sitting of the High Court for trials, or at the County Court of the county in which the action is brought.

Q. (709) Claim for damages. A sues B, C, and D. B does not appear, C appears, and D appears, but does not require a statement of claim. What can A do?

A. He may sign interlocutory judgment against B, and assess the damages against him at the same time as the trial of the action or issue therein against the other defendants, unless the Court otherwise directs.

Q. (712) What provision as to the assignment of breaches, etc., is in force here?

A. Chapter XI. of the Acts passed in the eighth and ninth years of the reign of King William the Third.

(*b*) *Dower.*

Q. (713) If the defendant in an action for dower fails to appear, what right has the plaintiff?

A. The plaintiff may enter judgment of seisin forthwith and sue out a writ of assignment of dower, but the entry of such judgment shall not prevent her from proceeding with the action for the recovery of arrears of dower, and damages for the detention thereof.

(*c*) *Recovery of Land.*

Q. (714) In an action for the recovery of land, what judgment may the plaintiff take

in case of the non-appearance of the defendant?

A. The plaintiff may enter judgment that the person whose title is asserted in the writ shall recover possession of the land.

Q. (716) What right is allowed a plaintiff where no appearance is entered in an action for the recovery of land, and the defendant is in actual adverse possession?

A. If the plaintiff files the writ and an affidavit showing that the writ has been properly served, and an affidavit stating that the party so served was, at the time of the issue of the writ, in actual adverse possession of the land, or, instead of such affidavits, obtains and files an order of the Court or a Judge allowing him to sign judgment as well for his costs as for recovery of possession of the land, the plaintiff may at once sign judgment that the person whose title is asserted in the writ shall recover and have possession of the land, and also his costs, and the plaintiff may forthwith issue execution thereupon.

(*d*) *Mortgage Actions.*

Q. (717) What steps must the plaintiff take to get judgment in a mortgage action where there are infants interested and no defence is set up?

A. After the statements of defence are filed, or after the time for filing the same has expired, the plaintiff is to

file affidavits of the due execution of the mortgage and of such other facts and circumstances as entitle him to a judgment, and is to apply for the judgment in Chambers, upon notice to the guardian "*ad litem*" of the infants' and the other defendants' solicitor (if any).

Q. (718, 1349) How do you obtain judgment in a mortgage action when the defendant appears and disclaims any interest in the mortgaged premises?

A. The plaintiff is, on *præcipe* to the registrar or other proper officer in whose office the appearance of the defendant is required to be entered, to be entitled to judgment.

Q. (718, 1349) If a writ in a mortgage action has been served by publication, and the defendant does not appear, what is required from the plaintiff before he can get judgment?

A. Where the writ has not been personally served, the claim of the plaintiff must be verified by affidavit.

(2) DEFAULT IN PLEADING.

Q. (719) What right has the plaintiff where the defendant does not within the time allowed deliver a statement of defence?

A. The plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

Q. (720) What right has the plaintiff where there are several defendants and one of them does not deliver a statement of defence within the time limited?

A. The plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the others.

Q. (721) What may the plaintiff do where he claims damages for the detention of goods, and the defendant makes default in delivering a statement of defence?

A. The plaintiff may enter an interlocutory judgment against the defendant, and the value of the goods shall be assessed.

Q. (723) If the plaintiff's claim be for a liquidated demand and also for pecuniary damages, and the defendant makes default in delivering a statement of defence, what are the rights of the plaintiff?

A. The plaintiff may enter final judgment for the liquidated demand, and enter interlocutory judgment for the damages, and the damages shall be assessed by the Court.

Q. (724) In an action for the recovery of land the defendant does not deliver a statement of defence, what are the rights of the plaintiff?

A. The plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Q. (727, 1350) How may the plaintiff obtain judgment in cases not otherwise provided for, where the defendant does not deliver a defence?

A. By setting down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

(3) Confession of Action or Judgment

(*a*) *Generally.*

Q. (730) How may a defendant confess the plaintiff's title to the whole or part of the property in question, in an action for the recovery of land?

A. By giving to the plaintiff a notice entitled in the Court and cause, signed by himself (the defendant), and the signature attested by his solicitor.

Q. (730) What is the effect of such a confession?

A. The plaintiff may forthwith sign judgment and issue execution for the recovery of possession and costs.

Q. (733) What is a *cognovit actionem?*

A. A *cognovit actionem* is a statement signed by the defendant in an action confessing the plaintiff's demands to be just, and empowering the plaintiff to sign judgment against him in default of his paying the plaintiff the sum due to him within the time mentioned in the *cognovit.*

Q. (734) What must the plaintiff do before he can sign judgment on a *cognovit actionem* over one and under ten years old?

A. He must make an *ex parte* application to a Judge for an order granting leave to enter up judgment upon such *cognovit actionem.*

Q. (734) What must the plaintiff do if the *cognovit actionem* is more than ten years old?

A. He must apply by motion upon notice to a Judge for an order granting leave to enter up judgment upon such *cognovit actionem.*

Q. (735) What are the requisites of a confession of judgment or *cognovit actionem* of record?

A. It, or a sworn copy thereof, must be filed within one month after the same has been given in the proper office of the Court in the county in which the person giving such confession of judgment or *cognovit actionem* resides, and unless there shall be present some solicitor on behalf of such person, expressly named by him, and

attending at his request, to inform him of the nature and effect of such warrant or *cognovit actionem* before the same is executed, which solicitor shall subscribe his name as a witness to the execution thereof, and thereby declare himself to be solicitor for the person executing the same, and state that he subscribes as such solicitor, and in the affidavit of execution the attendance of such solicitor, and the fact of his being a subscribing witness, shall be stated, which affidavit and the warrant of attorney, or *cognovit*, shall be filed at the time of entering judgment thereon.

(*b*) *Interim Alimony.*

Q. (738) How may the defendant avoid the expense of an order directing the payment of interim alimony?

A. By giving notice in writing at any time before the statement of defence is due that he submits to pay interim alimony and costs, as demanded by the plaintiff.

Q. (738) Default is made in the payment of interim alimony, what are the rights of the plaintiff?

A. The plaintiff may obtain an order on *præcipe* for payment on filing an affidavit verifying the endorsement on the writ and notice and the default.

(4) Leave to Sign Judgment.

Q. (739) How and in what cases may leave to sign final judgment be obtained where the defendant appears ?

A. In cases where the writ has been specially endorsed, the plaintiff may, on an affidavit verifying the cause of action, and stating that, in his belief, there is no defence, serve the defendant with a notice of motion for judgment, and the Judge may make an order empowering the plaintiff to sign judgment accordingly ; or where the defence applies only to a part of the plaintiff's claim, or where the defence admits any part of the plaintiff's claim, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, subject to such terms as the Judge may see fit to impose ; or where it appears to the Judge that any defendant has a good defence to the action, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter.

Q. (744) When will the Court entertain a motion for judgment before the writ of summons is served ?

A Where at any time after the issue of a writ of summons it is made to appear to the Court or a Judge, on an *ex parte* application, that it will be conducive to the ends of justice to permit a notice of motion for judgment to be served forthwith, the Court may permit such notice

to be served, and may, upon the return of such motion, make such order as to the Court or Judge may seem proper.

(5) Application for Account.

(6) Motion for Judgment.

Q. (745) In an action for account where the rules do not entitle the plaintiff to a judgment or order on *præcipe* or otherwise, what must the plaintiff do?

A. He shall obtain, on an application made on notice and supported by affidavit, an order that such account be taken.

Q. (1349, 726) In what cases is a judgment on *præcipe* allowed?

A. In mortgage actions, where the defendant does not appear, or appears and admits the execution of the mortgage, or sufficient facts to entitle the plaintiff to judgment, or where default has been made in delivering a defence.

Q. (749) At this trial, what must a plaintiff prove in order to entitle him to judgment?

A. Sufficient facts to entitle him to a judgment in point of law.

Q. (751) On a trial by affidavit, what is the rule as to motions for judgment?

A. A notice of motion for judgment thereon shall be given at the same time or times after the close of the evidence as in other cases is provided after the close of the pleadings.

Q. (752) Within what time must a party set an action down on motion for judgment?

A. Within one year from the time when the party seeking to set down the same first became entitled to do so.

Q. (755) On a motion for judgment, what disposition may the Court make of the matter?

A. The Court may give judgment, or may direct the motion to stand over for further consideration, or direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

Q. (756) At what stage in an action may a party apply for judgment on admissions?

A. May apply at any stage upon any admissions of fact in the pleadings, or in the examination of any other person.

Q. (848) When does a Master's report become absolute?

A. Every Master's report becomes absolute at the expiration of fourteen days from the time of filing the same, including such day, unless notice of appeal is served within that time

Q. (758) What is the penalty where the party having the conduct of the action does not within fourteen days set the same down by way of motion for judgment on further directions, where further directions have been reserved?

A. Any other party affected by the report may set the same down and serve notice of the motion.

(7) Settlement of Judgments and Orders.

(8) Entry of Judgments and Orders.

Q. (762) What is the practice on passing a judgment?

A. The proposed minutes of the judgment must be prepared by or delivered to the officer by whom the same is to be settled, and notice (where the officer deems a notice proper) is to be by an appointment signed by him, a copy whereof is to be served, and the proposed minutes shall remain in his office for inspection until settled or passed.

Q. (765) From what day does a judgment take effect?

A. From the day on which the judgment is pronounced.

Q. (771) What is meant by liberty to apply, how is it reserved?

A. It is the reserving of the right in any judgment or order by any party to apply for such relief as he may deem necessary. It is not now necessary. The party may apply from time to time as he may be advised.

(9) Form and Variation of Judgments and Orders.

Q. (776) What must a judgment for foreclosure or sale contain ?

A. Where a reference is required, after the proper recitals hitherto in use, it is necessary to direct, in general terms, that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for foreclosure or sale, and that for these purposes the cause is referred to a named Master.

Q. (782) How do you proceed to have a judgment or order varied, reversed, or superseded ?

A. The party is to proceed by petition in the cause, praying the relief which is sought, and stating the grounds upon which it is claimed.

Q. (781) How can you get an order amended so as to cover matter omitted ?

A. The same may be amended by the Court on motion without an appeal, if, under all the circumstances, the Court deems fit.

(10) Entry of Satisfaction.

Q. (787) What is a satisfaction piece?

A. It is an acknowledgment of the satisfaction of a judgment signed by the party acknowledging the same, or his personal representative, and his signature shall be witnessed by some practising solicitor expressly named by him, and attending at his request to inform him of the nature and effect of such satisfaction piece before the same is signed.

(11) Motions against Verdicts or Judgments.

Q. (789) A case is tried by a jury, where must you apply for a new trial? What are the requisites for notice of motion?

A. Must apply to a Divisional Court. The ground upon which the motion is made shall be shortly stated therein.

Q. (791) What grounds must a party have for an application for a new trial?

A. Misdirection, or the improper admission or rejection of evidence, or that the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, if it be the opinion of the Court to which the application is made that some substantial wrong has been thereby occasioned in the trial of the action.

Q. (797) What was and is the effect of a judgment of non-suit?

A. It shall have the same effect as a judgment upon the merits for the defendant, but, in any case of mistake, surprise, accident, or otherwise, any judgment of non-suit may be set aside, on such terms as to the Court or Judge shall seem just.

Q. (798) Where an action has been tried by a jury, what is the proper course to obtain a new trial?

A. Any party may, without any leave reserved, apply to set aside such judgment, and to enter any other judgment on the ground that the judgment directed to be entered is wrong, by reason of the judge having caused the judgment to be wrongly entered, with reference to the finding of the jury upon the question or questions submitted to them.

Q. (798) Where an action has been tried by the Judge, and the Judge has directed a judgment to be entered, how do you obtain a new trial?

A. Any party may, without any leave reserved, apply for a new trial, or enter any other judgment upon the ground that the judgment so directed is wrong.

Q. (798) Is it necessary to move separately against the finding of the jury and the judgment to be entered thereon?

A. No.

Q. (799) If a jury disagrees, what power has the Court?

A. The Court may, notwithstanding such disagreement, give judgment of non-suit.

CHAPTER VI.

APPEALS.

(*a*) GENERALLY.

Q. What rule is laid down by the Law Courts Act of 1895 as to the number of appeals to be allowed any party?

A. Only one appeal from any judgment or order made in any action or matter is to be allowed, save only at the instance of the Crown in a case in which the Crown is concerned.

Q. In case of an appeal to the Divisional Court of the High Court in a case in which an appeal lies to the Court of Appeal, when will a further appeal lie to the Court of Appeal?

A. The party so appealing is not entitled to afterwards appeal to the Court of Appeal.

Q. Are there any exceptions to the rule that there shall be only one appeal; if so, state the exceptions?

A. Yes, by special leave to be obtained upon an application to the Divisional Court, or the Judge whose judgment or order is in question, or to the Court of Appeal, or

to a Judge thereof, the granting or refusal of such leave to be in the discretion of the Court or Judge applied to in view of all the circumstances, and provided the case falls within one of the following cases: either (*a*) the matter in controversy on the proposed appeal must exceed the sum or value of $1,000 exclusive of costs; or, (*b*) the title to real estate, or some interest therein, or the validity of a patent must be affected; or, (*c*) the matter in question must relate to the taking of an annual or other rent, customary or other duty or fee, or be a like demand of a general or public nature affecting future rights; or, (*d*) the judgment or order must involve questions of law or practice on which there has been fluctuating decisions or opinions by the High Court of Justice, or by the Judges thereof; or, (*e*) the judgment or order must be in regard to a matter of practice which affects the ultimate rights of the parties to the action; or, (*f*) there must be other sufficient special reasons for treating the case exceptionally and allowing a further appeal.

Q. What security is required on an appeal to the Court of Appeal?

A. No security is required for costs or damages unless security is specially ordered by the Court to which the appeal is made, or a Judge thereof.

Q. When, if ever, will an appeal lie to the Court of Appeal from a decision of a Divisional Court of the High Court?

A. An appeal lies to the Court of Appeal from every judgment, order, or decision of the High Court which was not itself pronounced by way of appeal.

Q. In case of an "appeal," will execution be stayed?

A. Yes.

Q. (804) The judgment appealed from directs the execution of a conveyance, what must be done before execution will be stayed?

A. The instrument must be executed and deposited with the proper officer of the Court appealed from to abide the judgment of the Court of Appeal.

Q. (812) The judgment directs a sale of real property. Within what time must the appellant reply for a stay of execution?

A. Within fourteen days.

Q. (821) Is a cross-appeal necessary?

A. No. The respondent may in his reasons against the appeal give notice that he intends to contend upon the hearing of the appeal that the decision should be varied.

Q. Is notice of appeal necessary?

A. Yes. An appeal to the Court of Appeal shall be by notice of motion, setting forth the grounds of the appeal.

Q. When must such notice be given?

A. Such notice must be given for the first day of the sittings of the Court of Appeal, commencing after the expiration of one month from the date on which judgment was signed.

Q. What must the reasons for and against the appeal specially contain?

A. The points of law intended to be argued and the authorities intended to be relied upon.

(*b*) Appeals from Chambers.

Q. (846) What right has a party affected by an order of the Master in Chambers to appeal therefrom?

A. Any party affected by such order may appeal therefrom.

Q. To whom may the appeal be made?

A. To a Divisional Court of the High Court.

Q. A Local Judge having jurisdiction only by consent of the parties gives a decision, what right of appeal has a person affected by such decision therefrom?

A. Such party may appeal therefrom to a Judge of the High Court in Chambers.

Q. Within what time must notice of such appeal be served?

A. Within four days after the decision complained of, or within such further time as may be allowed by a Judge of the High Court, or by the officer whose decision is complained of.

Q. (847) What rule is laid down as to procedure on appeals to a Divisional Court from any decision of a Judge in Chambers?

A. Every such appeal must be by motion, which must be set down, at latest, on the day before the sittings, and shall be made at the first sittings of a Divisional Court which takes place after the decision complained of, unless otherwise ordered.

(*c*) Appeals from Masters and Referees.

Q. (846) Within what time must notice of appeal be served from the report of a Master or Referee?

A. Within fourteen days from the day of filing the same, including such day.

Q. (849) What notice of appeal is necessary?

A. Seven clear days' notice.

Q. (849) What must such notice of appeal set out, and within what time is it returnable?

A. It must set out the grounds of appeal and be returnable within one month from the date of the report, unless otherwise ordered.

(*d*) Appeals to the Judicial Committee of the Privy Council.

Q. (855) Is it necessary that security be given in cases of appeal to Her Majesty in Privy Council?

A. Yes.

Q. (855) What security must be given?

A. Personal security by bond to the respondent or respondents, such bond to be executed by the appellant or appellants, and by two sufficient sureties in the penal sum of $2,000.

CHAPTER VII.

ENFORCEMENT OF JUDGMENTS AND ORDERS.

(1) Writs of Fieri Facias, etc.

Q. (859) What is a writ of *fieri facias?*

A. It is a command to the party to whom it is directed, generally the sheriff, that of the goods and chattels of the defendant he do cause to be made the sum recovered by the judgment, together with interest, and that he have the money and interest, and the writ itself, before the Court immediately after the execution of the writ, or on a day certain, to be rendered to the party who sued out the writ.

Q. (860) What is a writ *venditione exponas?*

A. It is a judicial writ directed to the sheriff, commanding him to sell goods which he has taken into his hands by virtue of a former writ (but to which he has returned that he has taken the goods, that they have remained in his hands for want of buyers) in order to satisfy the judgment against the defendant.

Q. (681) What is a writ of *habere facias possessionem?*

A. It is a writ directed to the sheriff directing him to give actual possession to the claimant of the land recovered.

Q. (865) When is the plaintiff entitled to issue execution against lands in the County Court when the amount of the judgment is $40.00?

A. He cannot issue execution against lands unless the judgment exceeds $40.00.

Q. (865) May he issue execution against chattels?

A. Yes.

Q. (868) How may a judgment for the recovery of the possession of land be enforced?

A. It may be enforced by a writ of possession.

Q (873) What is a writ of sequestration?

A. It is a writ directed to commissioners therein named commanding them to take possession of all the property, real and personal, of the person against whom it is issued, and it is used as a means of obtaining obedience to a decree of the Court, and it authorizes the commissioners to enter upon the land, collect the rents, and realize the effects of the person against whom it is issued, the proceeds being paid into Court to abide further order.

Q. (873) A recovers judgment against B that specific securities or certain valuable papers be handed over to him, and B refuses to obey the judgment, what are A's remedies?

A. A may request the Court or a Judge to direct a writ of execution to issue on the judgment commanding the defendant specifically to deliver up forthwith the property demanded, and, in case of refusal, that the defendant be arrested and detained in prison until he complies with the terms of the writ, and that also the goods and chattels of the defendant to double the value of the property in question be taken and kept until the further order of the Court to ensure or enforce obedience to the writ, or that a writ of sequestration may issue, or, at the option of the plaintiff, the Court or Judge may order the sheriff to make of the defendant's goods the value of such property.

Q. (874) How is a judgment requiring a person to do or leave undone any other act than the payment of money enforced?

A. It may be enforced by a writ of attachment, or by committal.

Q. (875) How is a judgment for conditional relief enforced?

A. The party so entitled may, upon the fulfilment of the condition and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party.

Q. (876) How is a judgment against partners enforced?

A. By issuing execution against any property of the partners as such, or against any person who has admitted on the pleadings that he is or has been adjudged to be a

partner, or against any person who has been served as a partner with the writ of summons, and has failed to appear, or against any person as being a member of the firm, if the party who has obtained judgment satisfies the Court or a Judge that he is entitled to have execution.

Q. (877) On execution by an infant, what is the rule as to the disposal of moneys?

A. The same shall, unless otherwise ordered, be paid into Court subject to further order.

Q. (877) A writ of execution is issued on behalf of an infant, what special notice must be endorsed on same?

A. It shall be endorsed by the officer issuing the same with the following notice: "All moneys made under this execution, other than costs, are to be paid into Court by the sheriff, as required by rule 877."

2. Attachment and Sequestration.

Q. (881) When is a sequestration issued?

A. In case a person is taken or detained in custody under a writ of attachment, without obeying the judgment or order, the party prosecuting the judgment or order is entitled upon *præcipe* to a commission of sequestration against the estate and effects of the disobedient person.

Q. (882) When may a commission of sequestration be granted against the estate and

effects of a disobedient person without issuing an attachment?

A. Where an attachment cannot be executed against the person refusing or neglecting to obey the judgment or order, by reason of his being out of the jurisdiction of the Court, or of his having absconded, or that with due diligence he cannot be found, or in any case the Court may think proper to dispense with a writ of attachment.

3. Issue and Form of Writ.

Q. (885) Within what time may execution issue upon a judgment?

A. Execution may issue at any time within six years from the recovery of the judgment.

Q. (886) In what cases must you apply to the Court for leave to issue execution?

A. In cases where six years have elapsed since the judgment or the date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution; where a husband is entitled or liable to execution upon a judgment or order for or against his wife; and where a party is entitled to execution upon a judgment of assets *in futuro*.

Q. (886) A recovers judgment against his wife B. Is it necessary that he should obtain an order before issuing execution?

A. Yes.

Q. (889) What endorsement is required on every writ of execution?

A. Every writ of execution shall be endorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ sues out the same as agent for another solicitor the name and place of abode of such other solicitor shall also be endorsed upon the writ, and, in case no solicitor is employed, it shall be endorsed with a memo. expressing that the same has been sued out by the plaintiff or the defendant in person, as the case may be, mentioning the city, town, or other place, and also the name of the street and number of the house of such plaintiff's or defendant's residence, if any such there be.

Q. (894) How long does a writ of execution remain in force?

A. For a period of three years, or until satisfied in the meantime by payment or withdrawal by the party prosecuting the same. 57 Vict., c. 26, s. 2.

Q. (894) How is a writ of execution renewed?

A. Writs of execution are now, after the expiration of three years, renewable in the same manner and way as writs of execution were formerly renewed, that is, for periods of three years, by being marked in the margin with a memorandum, signed by the officer who issued such writ, or his successor, stating the date of the day, month, and year of such renewal, or by such party giving a written

notice of renewal to the sheriff, signed by the party or his solicitor, and having a like memorandum.

Q. (896) What is a writ of *capias ad satisfaciendum*, and how long does it remain in force?

A. It is a writ directed to the sheriff, and commanding him to take the defendant and safely keep him, in order that he may have his body before the Court on a day mentioned in the writ to make the plaintiff satisfaction for his demand, and it is in force for two months from the day of the date thereof inclusive, and no longer.

4. Sale under Writ.

Q. (899) What notice is required for a sheriff's sale?

A. At least eight days' notice in writing of the time and place of sale in the most public place in the municipality where such effects have been taken in execution.

Q. (901) What time must elapse before a sheriff may sell lands under a writ against lands delivered to him?

A. Not less than twelve months from the day on which the writ against the lands is delivered to him.

Q. (902) In what case may the sheriff execute a writ of execution against lands before the expiration of the twelve months?

A. When a writ against lands is issued in an action against an absconding debtor and an order for attachment is issued, the Court or a Judge may order the sheriff to sell the lands before the expiration of twelve months.

Q. (906) Is it necessary that the sheriff advertise a sale of real estate, and, if so, what are the provisions as to how it shall be done?

A. Yes. The sheriff shall publish an advertisement of the sale in the *Ontario Gazette* at least six times, specifying the particular property to be sold, the names of the plaintiff and defendant, the time and place of the intended sale, and he shall, for three months next preceding the sale, also publish such advertisement in a public newspaper of the county in which the lands lie, or shall, for three months, put up and continue a notice of such sale in the office of the Clerk of the Peace, or on the door of the court house, or place in which the Court of General Sessions of the Peace of the county is usually held.

5. Discharge of Execution Debtors from Custody.

Q. (925) On what authority may the sheriff discharge a person from custody?

A. On the written order of the solicitor in the action by whom the writ of *capias ad satisfaciendum* was issued.

6. Attachment of Debts.

Q. (926, 1360) Where the judgment is for costs only, will an examination of the debtor be allowed?

A. Yes.

Q. (926, 1360) Is there any restriction as to what questions may be asked the debtor where the judgment is for costs only?

A. He may be examined as to the disposal he has made of any property since the issue of the writ of summons, and as to any and what debts are owing to him.

Q. (926, 1360) How is the examination of a judgment debtor obtained?

A. The party entitled to enforce the judgment may, without an order, examine the judgment debtor upon oath before the proper officer, or by the order of the Court or a Judge before any other person, by serving such person so liable to be examined with an appointment signed by the officer before whom the examination is to take place, such service to be made at least forty-eight hours before the time appointed for the examination, and paying the person to be examined the same fees as a witness, or by serving the appointment on his solicitors seven days before the day appointed for the examination, and the conduct money may be paid or tendered to the solicitors.

Q. (935, 1361) How is an attachment of debts due the judgment debtor obtained by the judgment creditor?

A. The Court or a Judge may, upon the *ex parte* application of the judgment creditor or the person entitled to enforce the judgment, either before or after the oral examination of the debtor, and upon affidavit by himself or his solicitor, or some other person or persons aware of the facts respectively, stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor and is within Ontario, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge, or an officer of the Court, as the Court or a Judge shall appoint, to show cause why he should not pay the judgment creditor, or the person entitled to enforce the judgment, so much thereof as may be sufficient to satisfy the judgment debt.

Q. (936) From what time does an attaching order bind debts?

A. From the time of the service of the order on the garnishee.

Q. (941) What power has the Court if the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt?

A. The Judge may make an order directing execution to issue out of the County Court, or out of a Division Court, according to the amount due, and such order shall be sufficient authority for the clerk of either of such Courts to issue execution for levying the amount due from such garnishee.

Q. (946) What protection is afforded to the garnishee where he makes a payment under a judgment which is subsequently reversed?

A. Payment made by the garnishee shall be a valid discharge to him as against the judgment debtor for the amount paid, although the judgment is reversed.

CHAPTER VIII.

PETITIONS OF RIGHT.

Q. (949) What is a petition of right?

A. A petition of right is a claim of right grounded on facts already acknowledged and established, and praying the judgment of the Court whether, upon such facts, the king or the subject has the right.

Q. (949) What must a petition of right set forth?

A. A petition of right is to be entitled in one of the Divisions of the High Court, and must name the proposed place of trial, and shall be addressed to Her Majesty, and shall state the christian name and surname and usual place of abode of the suppliant, and of his solicitor, if any, by whom the same is presented, and shall set forth with convenient certainty the facts entitling the suppliant to relief, and shall be signed by the suppliant, his counsel, or solicitor.

Q. (962) What endorsement is required on a petition of right in respect of real property?

A. It shall be endorsed with a notice requiring such person to appear thereto within eight days, and to file his statement of defence within fourteen days after the same has been so served or left for him.

Q. (950, 951) What is the procedure on a petition of right?

A. The petition shall be left with the Provincial Secretary, in order that the same may be submitted to the Lieutenant-Governor for his consideration, and in order that the Lieutenant-Governor, if he thinks fit, may grant his fiat that right be done, and on his fiat being obtained a copy of the petition and fiat shall be left at the office of the Attorney-General, with an endorsement thereon, praying for an answer on behalf of Her Majesty within twenty-eight days.

Q. (954) Within what time must the defence to a petition be filed on behalf of Her Majesty?

A. Within twenty-eight days after the petition has been left at the office of the Attorney-General, or such further time as may be allowed by the Court or a Judge.

Q (958) What rule is laid down as to the trial of issues by a jury on a petition of right?

A. Any issue of fact or assessment of damages to be tried or had in respect of a petition of right shall be tried or had by a Judge without a jury.

Q. (959) What rule is laid down as to the judgment of the Court upon a petition of right, where there has been default in pleading?

A. The judgment of the Court shall be that the suppliant is or is not entitled to the whole or to some portion of the relief sought by his petition, or that such or other relief be given, and upon such terms and conditions, if any, as the Court thinks just.

CHAPTER IX.

PROCEEDINGS WITHOUT WRIT.

1. Petitions.

Q. (964) What notice is required to be endorsed upon every petition?

A. There shall be endorsed on every petition a notice addressed to the parties concerned, stating the time and place at which the petition is to be heard, and informing them that if they do not appear on the petition at such time and place the Court may make such order, on the petitioner's own showing, as shall appear just.

2. Administration.

Q. (965) Who may apply for administration proceedings without issuing a writ?

A. Any person claiming to be a creditor, or a specific, or a pecuniary, or residuary legatee, or the next of kin, or one of the next of kin, or the heir, or a devisee interested under the will of a deceased person, may apply to the Court or a Judge upon motion, without any action being instituted or any other preliminary proceeding, for an order for the administration of the estate, real or personal, of such deceased person.

Q. (966) What notice of the motion mentioned in the preceding question is necessary?

A. A notice of the motion is to be served upon all proper parties at least fourteen days before the day named for hearing the same.

Q. (970) What is necessary before accounts or inquiries in respect of the real estate are to be directed?

A. Notice of the application must be given to the heirs and devisees interested therein, or one or more of them.

Q. (973) What power has the Master in administration proceedings?

A. The Master has full power to deal with both the realty and personalty of the estate, the subject of administration, and shall dispose of the costs of the proceedings, and shall finally wind up all matters connected with the estate, without any further directions, and without any separate, interim, or interlocutory reports or orders, except where the special circumstances of the case absolutely call therefor.

Q. (976) What must every advertisement for the creditors of the estate of a deceased person direct?

A. It is to direct every creditor, by a time to be limited, to send to such other party as the Master directs, or to his solicitor, to be named and described in

the advertisement, the name and address of the creditor, and the full particulars of his claim, together with a statement of his account, and the nature of the security, if any, held by him.

Q. (977) Is it necessary that the creditor should make an affidavit or attend in support of his claim? If not, how may his attendance be secured?

A. No creditor need make an affidavit or attend in support of his claim, except to produce his security, if any. He must attend if served with a notice to do so.

Q. (981) State some of the duties of an executor or administrator in respect of claims against an estate?

A. The executor or administrator, or one of them, or such other person, either alone or jointly with his solicitor, or other competent person, or otherwise, as the Master directs, is, at least seven clear days before the day appointed for adjudication, to file an affidavit verifying a list of the claims, the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims or parts thereof, respectively, the estate of the deceased is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof, are justly due and proper to be allowed, and the reasons for such belief.

Q. (985, 986) A creditor sends in his claim after the time fixed by the advertisement; on what terms will he be let in?

A. He may send in his claim seven clear days previous to any day to which the adjudication is adjourned, but, except in this case, no claim is to be received unless the Master thinks fit to give special leave upon application, and then upon such terms and conditions, as to costs and otherwise, as the Master directs.

(3) Partition.

Q. (989) Who may apply for partition?

A. Any adult person entitled to a judgment or order for the partition of an estate.

Q. (989) What notice, if any, must the person desirous of obtaining an order for partition give to the other parties interested in the property?

A. He must give fourteen clear days' notice of motion.

Q. (989) What are the powers of the Judge upon such an application?

A. The judge may make such order for partition or sale, or such other order as may be proper, and the Master shall thereupon proceed in the least expensive and most expeditious manner, according to the practice, for the partition or sale of the premises, the ascertainment of the rights of the various persons interested, the adding of parties, the taxation and payment of costs, and otherwise.

(4) PROPERTY OF INFANTS.

Q. (992) To whom must all applications for the sale, mortgage, lease, or other disposition of an infant's estate be made?

A. To the Master in Chambers.

Q. (993) Who must be notified of such an application as is mentioned in the preceding question?

A. The official guardian.

Q. (994) How is a petition for the sale of the real estate of an infant to be intituled?

A. To be intituled in the matter of the infant.

Q. (995) How do you obtain an order for the sale of infants' estates?

A. By a petition which is to be presented in the name of the infant by his guardian, or by a person applying by the petition to be appointed guardian.

Q. (996) What must the petition state?

A. It must state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, its nature, value, and the annual profits thereof; also circumstances sufficient to justify the sale, and the application of the proceeds in the manner proposed; also specifically state the relief that is desired,

the lands to be disposed of, and must propose a scheme for that purpose, and for the appropriation of the proceeds, and, if an allowance for maintenance is desired, it must be so prayed.

Q. (998) When must the infant be produced before the Master in case of a petition for the sale of his estate?

A. Upon all petitions for the sale of an infant's estate, the infant is to be produced before a Judge in Chambers or before a Master.

Q. (999) What is necessary if the infant is over the age of fourteen years?

A. He is to be examined apart by the Judge or Master upon the matter of the petition, as to his consent thereto, and his examination is to be stated to have been taken, and is to be annexed to and filed with the petition.

Q. (1000) What must be done in case the infant is under the age of fourteen years?

A. It shall not be necessary to examine any infant under fourteen years of age, unless required by a Judge, but it is sufficient for the officer before whom the infant is produced to certify that he has been produced, and that he is under the age of fourteen years.

Q. (1004) What is required on settling a conveyance of infant's land?

A. Evidence is to be produced to the officer settling the same of the purchase money having been paid into Court, or of the payment thereof into Court having been dispensed with, and, in cases where there is to be a mortgage for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the accountant.

(5) Devolution of Estates.

Q. (1005) What is required of an executor or administrator before taking proceedings under The Devolution of Estates Act for the sale of real estate in which infants are concerned?

A. He must give the official guardian, or other proper officer, notice of the intention to sell.

(6) Summary Inquiries into Fraudulent Conveyances.

Q. (1007) What method of summary procedure is provided for setting aside fraudulent conveyances?

A. A motion may be made to the Court or a Judge in Chambers by the judgment creditor, calling upon the judgment debtor or person who is to pay, and the persons to whom the conveyance has been made, or who have acquired any interest thereunder, to show cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution.

Q. (1008) What remedy has the judgment creditor against the property of a judgment debtor who has only an equitable interest in such property?

A. Where the judgment creditor alleges that the debtor is entitled to or has an interest in any land which formerly could not be sold under legal process, but which could be rendered available, in an action for equitable execution, by sale for satisfaction of the debt, the Court may, upon the application of the creditor, call upon the debtor and the trustee, or other person having the legal estate in the land in question, to show cause why the said land or interest therein of the debtor, or a competent part of the said land, should not be sold to realize the amount to be levied under the execution.

Q. (1011) What power has the Court where any such property is found liable to be sold?

A. The Court or a Judge may make an order declaring what land or what interest therein is liable to be sold, and directing a sale thereof by the Master according to the usual practice.

Q. (1012) What is a certificate of "*lis pendens*"?

A. It is a certificate issued by an officer of the Court in which the action is pending, stating that the action affects the property described in such certificate.

CHAPTER X.

EXTRAORDINARY REMEDIES.

(1) Bailable Proceedings.

(*a*) *Arrest.*

Q. (1045, R.S.O., c. 67, s. 1) In what cases may an order for arrest be issued?

A. Where a person, being a creditor of or having a cause of action against another person liable to arrest, by affidavit, shows to the satisfaction of a Judge of the High Court or County Court that he has a cause of action against such person for $100.00 or upwards, or that he has sustained damage to that amount, and also shows such facts and circumstances as satisfy the Judge that there is good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally, or the said person in particular, the Judge may order that the person against whom the application is made shall be held to bail for such sum as the Judge thinks fit, and thereupon such person, within the time expressed in the order, but not afterwards, may sue out a writ of *capias* and one or more concurrent writs of *capias* in the High Court or County Court against the person so ordered to be held to bail, and the Judge of the County Court may grant orders to hold to bail where process is intended to be sued out of or an

action has been commenced in the High Court as well as in his own Court.

Q. (1047) How long is an order for arrest in force?

A. Every order for arrest shall be in force for two months from the day of the date thereof inclusive, and no longer.

Q. (1048) What power has the Court as to granting concurrent or duplicate orders for arrest?

A. The Court has power to issue concurrent or duplicate orders for arrest from time to time in like manner and form as the original order, and they shall be in force for the same period as the original order, and no longer.

Q. (1050) What are the duties of the sheriff on being handed an order for arrest?

A. The sheriff shall within two months from the day of the date of the order for arrest, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of such order cause one copy thereof to be delivered to every person whom he is directed to arrest, and he shall exhibit the original order to each.

Q. (1051) How may a person arrested on an order for arrest protect himself?

A. He may apply at any time after his arrest to the Court or a Judge for an order that he be discharged out of custody.

Q. (1051) What are the powers of the Court upon such an application?

A. The Court or Judge may make such order as they think fit, subject to appeal.

Q. (1052) When must the plaintiff's statement of claim be delivered within one month?

A. Where any defendant is taken or charged in custody upon an order, and imprisoned for want of bail to the action, the plaintiff must, within one month after the arrest of the defendant, deliver his statement of claim.

Q. (1052) In such a case, what is the defendant entitled to in case the plaintiff does not deliver his statement of claim within one month?

A. The defendant is entitled to be discharged from the arrest or detainer, unless further time to deliver the statement of claim is given to the plaintiff by the Court or a Judge.

Q. (1053) What is meant by charging in execution?

A. It is the delivering of a writ of *ca. sa* to the sheriff for the purpose of detaining in custody in execution a prisoner already in confinement.

Q. (1055) What must the sheriff do if the debtor is arrested on an order from a County Court?

A. He shall take bail from any defendant arrested thereon, and, if required, he shall assign the bail bond in like manner as in cases where like process is issued in the High Court, and such assignment shall have the same effect as if the order had issued from the High Court.

Q. What is meant by bail below, or bail to the sheriff?

A. Bail below or bail to the sheriff is such as a defendant puts in when arrested upon an order for arrest. This he does by entering into a bond to the sheriff, with sufficient sureties, conditioned for his appearance within the period required by the writ, and which bond the sheriff is obliged to accept and to discharge the defendant out of custody.

Q. What is meant by bail above, special bail, or bail to the action?

A. They are persons whom the defendant procures to become his sureties for the ultimate payment of the debt and costs in the action in the event of judgment passing against him, or as an alternative that he should surrender himself to prison. They were termed bail to the action because they were responsible for the defendant's abiding by the result of the action and obeying the judgment of the Court therein.

Q. (1063) What is a writ of *supersedeas?*

A. A writ which lies in various cases to supersede or to stay the doing of that which ought not to be done, on account of the particular circumstances of the case, but which ordinarily may be done.

Q. (1088) What amount of bail must be taken from a defendant arrested in an action for alimony?

A. In case an order is made for arrest in an action for alimony, the amount of the bail required shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs.

(*b*) ABSCONDING DEBTORS.

Q. (1089, R. S. O., c. 66, s. 1) Who is an absconding debtor?

A. An absconding debtor is a person resident in Ontario, and indebted to any other person, who departs from Ontario with an intent to defraud his creditors, and at the time of his so departing is possessed to his own use and benefit of any real or personal property, credits, or effects not exempt by law from seizure.

Q. (1045, R.S.O., c. 66, s. 1) How do you obtain an order for attachment?

A. Upon affidavit made by the plaintiff, his servant or agent, that a person leaving Ontario is indebted to him in a sum exceeding $100.00, and stating the cause of action, and that the deponent has good reason to believe, and does verily believe, that the person has departed from Ontario and has

gone to some place known or unknown, with intent to defraud the plaintiff of his just dues, or to avoid being arrested or served with process, and was at the time of his departing possessed of real or personal property, credits, or effects not exempt by law from seizure to his own use and benefit in Ontario, and upon the affidavit of two other credible persons that they are well acquainted with the debtor mentioned in the first-named affidavit, and have good reason to believe, and do believe, that the debtor has departed from Ontario with intent to defraud the plaintiff, or to avoid being arrested or served with process, the High Court or a Judge thereof, or a Judge of a County Court, may make an order for attachment.

2. Replevin.

Q. (1098) In what case may goods be replevied in Ontario?

A. Where the person claiming the property shows to the satisfaction of the Court or a Judge the facts of the wrongful taking or detention which is complained of, and that he is the owner thereof, or is lawfully entitled to the possession thereof, as the case may be.

Q. (1099) How is an order for replevin obtained on motion therefor, or on *præcipe?*

A. Firstly. On motion therefor, on an affidavit by the person claiming the property, or some other person, showing to the satisfaction of the Court or a Judge the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner

thereof, or is lawfully entitled to the possession thereof, as the case may be.

Secondly. On *præcipe*, if the person claiming the property, his servant or agent, makes an affidavit which shall be entitled and filed in the Court out of which the order is to issue, stating:

(*a*) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit).

(*b*) The value thereof, to the best of his belief.

(*c*) That the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two months next before the making of the affidavit.

(*d*) That the deponent is advised and believes that the claimant is entitled to the order.

(*e*) That there is good reason to apprehend that, unless the order is issued without waiting for a motion, the delay would materially prejudice the rights of the claimant in respect to the property.

Thirdly. On *præcipe* (in case the property was distrained for rent or damage feasant), if the person claiming the property, his servant or agent, makes an affidavit (which shall be entitled and filed in the Court from which the order is to issue), stating:

(*a*) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit).

(*b*) The value thereof, to the best of his belief.

(*c*) That the property was taken under color of a distress for rent or damage feasant.

Q. (1103) What is the duty of the Sheriff before he acts on an order for replevin?

A. He must take a bond from the plaintiff, with two sufficient sureties in treble the value of the property to be replevied, as stated in the order, which bond shall be assignable to the defendant.

3. Mandamus.

Q. (1112) In what cases may the plaintiff claim a mandamus?

A. The plaintiff in any action in the High Court of Justice, except in actions for replevin or ejectment, may endorse upon the writ and copy to be served a notice that he intends to claim a mandamus.

Q. (1112-17) In what different ways may the plaintiff obtain a mandamus?

A. He may endorse upon the writ and copy to be served a notice that he intends to claim a mandamus, or he may obtain an order of mandamus by motion to the Court upon notice of motion in the ordinary manner.

Q. (1112) May a claim for a mandamus be joined with any other demand?

A. Yes.

Q. (1114) On a claim for a mandamus, if judgment be given for the plaintiff, what power has the Court?

A. The Court may by the judgment command the defendant to perform, either forthwith or on the expiration of such time and upon such terms as may appear to the Court to be just, the duty in question, and the Court may also extend the time for the performance of the duty.

Q. (1115) What procedure has been substituted for a writ of mandamus?

A. No writ of mandamus is now issued in an action, but the mandamus shall be by judgment or order, which has the same effect as a writ of mandamus formerly had.

4. INJUNCTIONS.

Q. (1130) What has been substituted for the writ of injunction?

A. No writ of injunction is now issued in any case, but the injunction shall be by judgment or order, and any such judgment or order shall have the same effect as a writ of injunction formerly had.

5. INTERIM PRESERVATION OF PROPERTY.

Q. (1131) What power has the Court to order interim preservation of property?

A. Where by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court, or otherwise secured.

Q.(1133) What power has the Court as to perishable property, the subject-matter of dispute?

A. The Court or a Judge, on the application of any party to the action, may make an order for the sale, by any person or persons named in the order, and in such manner and on such terms as to the Court or a Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just or sufficient reason it may be desirable to have sold at once.

Q. (1135) What power has the Court to make an order for the detention, preservation, or inspection of any property the subject of an action?

A. The Court or a Judge may, upon the application of any party to an action, and upon such terms as may seem just, make any order for the detention, preservation, or inspection of any property being the subject of the action, and for all or any of the purposes aforesaid, to authorize any person or persons to enter upon or into any land or building in the possession of any party to the action, and for all or any of the purposes aforesaid to authorize any sample to be taken, or any observation to be made, or experiment to be tried which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Q. (1136) What may the Court do where an action is brought to recover property other

than land, and the other party claims to retain the property by virtue of a lien?

A. The Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise, to the satisfaction of the Court or a Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum, if any, for interest and costs as the Court or a Judge may direct, and that upon such payment into Court being made the property claimed be given up to him.

6. Prohibition.

Q. (1137) How may an application for an order for prohibition be made?

A. The application may be made on affidavit, subject to the general rules as to motions and evidence on motions.

Q. (1138) What has been substituted for the writ of prohibition?

A. An order for prohibition shall have the same effect as a writ of prohibition formerly had.

Q. (1138) To what Court must you apply to discharge, vary, or set aside an order for prohibition?

A. To the Divisional Court, subject to an appeal to the Court of Appeal.

7. Interpleader

Q. (1141) In what cases may relief by way of interpleader be granted?

A. (*a*) Where the person seeking relief (called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is or expects to be sued by two or more parties (called the claimants) making adverse claim thereto.

(*b*) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods or chattels, lands or tenements, taken or intended to be taken in execution under such process, or under an attachment against an absconding debtor, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process issued, relief by way of interpleader will be granted.

Q. (1142) Upon what points must the applicant satisfy the Court by affidavit or otherwise?

A. Firstly, he must satisfy the Judge that the applicant claims no interest in the subject-matter in dispute, other than for charges or for costs.

Secondly, that the applicant does not collude with any of the claimants.

Thirdly, that the applicant is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or Judge may direct.

Q. (1155) Where there are several executions against the same property in respect of which the interpleader is sought, what power has the Court?

A. It shall not be necessary for the sheriff to make a separate application for interpleader on each writ, or in each action, but he may make one application, and make all the persons who are execution creditors parties to said application, and the Court or Judge before whom the application is made may take such proceedings and make such order thereon and therein as if a separate application had been made upon and in respect of each writ.

Q. (1156) What must the sheriff do in case there are writs of execution from several Courts, including, say, the High Court, one or more County Courts, and one or more Division Courts, against the same goods?

A. He must make an application for such interpleader to the High Court, or to one of the Judges thereof, which Court shall dispose of the whole matter, as if all of the writs against the goods had been issued from the said Court, and in such case the County Court or Division Court shall have no cognizance of or jurisdiction whatever in the matter.

Q. (1157) The G.T.R. (common carriers) have in their possession goods belonging to A. Claim is made to such goods by three separate claimants whose claims have not a

common origin, what steps may the G.T.R. take to protect themselves?

A. They may apply on affidavit to any Judge of the High Court, or, if the value of the goods does not exceed $200.00, to any Judge of the County Court of the county within which such goods are at the time of the application, by motion, calling upon all the parties respectively claiming the said goods to appear and state the nature and particulars of their respective claims, and to maintain or relinquish the same.

Q. (1168) What power has the Court, if any such claimant, on being served with the notice of motion mentioned in the last question, does not appear?

A. The Judge may declare him barred from making or prosecuting his claim against the carriers, and the Judge may make such order between the parties to the application as may seem just.

CHAPTER XI.

COSTS.

(1) Security for Costs.

Q. (1242, 1376) When is the defendant entitled on *præcipe* to an order for security for costs of the action?

A. Where it appears by the writ of summons, notice, or other proceeding by which an action or matter is instituted, or by an endorsement thereon, that the plaintiff resides out of Ontario, the defendant shall be entitled on *præcipe* to an order requiring the plaintiff within four weeks of the service of the order to give security in $400.00 for the defendant's costs of the action, staying all further proceedings in the meantime, and directing that in default of such security being given the action be dismissed with costs against such defendant, unless the Court or Judge upon a special application for that purpose otherwise order.

Q. (1243) In what additional cases is the defendant entitled to an order for security for costs?

A. In cases where: (*a*) It is made to appear satisfactorily to the Court or a Judge that the plaintiff has brought a former action or proceeding for the same cause either in Ontario or any other country which is pending, or

that judgment or order has passed against him with costs, and that such costs have not been paid.

(*b*) In actions in which the plaintiff sues as an informer, or seeks to recover any penalty given to any informer who sues for the same as aforesaid, under any statute or law in which any penalty is given to any person, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, the Court may make an order for security for costs, in its discretion.

(*c*) In actions brought for libel contained in a public newspaper or periodical publication, the defendant may at any time after the filing of the statement of claim apply to the Court or a Judge for an order for security for costs, and the Court or Judge may make such an order, in its discretion. R.S.O., c. 57, s. 9.

Q. (1245, 1377) What is the rule as to the amount of security for costs to be given?

A. In any action or matter in which security for costs is required, the security shall be for such amount, and be given at such time or times, and in such manner or form, as the Court or a Judge shall direct.

Q. (1246) Within what time must the plaintiff furnish security for costs when ordered, and what penalty in case of failure?

A. The Court or a Judge may require the plaintiff to furnish security within a time to be limited in any order for such security or in any subsequent order, and, if the plaintiff fails without sufficient excuse to comply with such

order, he shall be liable to have his action dismissed as for want of prosecution, with costs.

Q. (1248) What option has a party ordered to give a bond as security for costs?

A. He may, without special order, instead of giving such bond, pay into Court a sum of money, not less than half the penalty of the bond required, to stand as security.

Q. (1251) What special provision is there in favor of a foreign plaintiff, liable to have to furnish security for costs, who specially endorses his writ of summons?

A. Where such foreign plaintiff endorses his writ of summons with particulars of his claim in such a manner that, upon motion under rule 739, an order allowing him to sign judgment might be made, he may, on being served with an order for security for costs, pay into Court the sum of $50, as a partial compliance with such order, and thereupon he shall be at liberty to proceed with such motion for judgment.

Q. (1251) What is the effect of such payment in of $50.00 on the order for security for costs?

A. Such payment in is to be deemed to be only a partial compliance with such order, and the order for security shall nevertheless, in all other respects, have its full operation and effect.

Q. (1252) What is the effect upon an order for security where, upon such motion, the plaintiff is allowed to sign judgment for any portion of his claim?

A. He may sign judgment and issue execution therefor, but shall not take any other proceedings until the order for security shall have been fully complied with.